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House of Representatives

(Legislative day of Friday, December 15, 1995)

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. HAYWORTH] at 12 noon.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

You have promised, O God, that You are with us wherever we are and whatever we are doing—to heal and to help, to give strength and to make us whole. We pray that we will be receptive to Your promises and receive them with confidence and conviction, that, armed by Your spirit, we will go forth to do those good works that promote justice and equity and truth. We admit that we miss the mark and yet we pray that we will be faithful messengers of Your Word and steadfast stewards of all Your gifts. In Your name, we pray. Amen.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The gentleman from Utah [Mr. HANSEN] will lead the membership in the Pledge of Allegiance.

Mr. HANSEN led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed with an amendment a bill of the House of the following title:

H.R. 1561. An act to consolidate the foreign affairs agencies of the United States; to authorize appropriations for the Department of State and related agencies for fiscal years 1996 and 1997; to responsibly reduce the authorizations of appropriations for United States foreign assistance programs for fiscal years 1996 and 1997, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 1561) ''An Act to consolidate the foreign affairs agencies of the United States; to authorize appropriations for the Department of State and related agencies for fiscal years 1996 and 1997; to responsibly reduce the authorizations of appropriations for United States foreign assistance programs for fiscal years 1996 and 1997, and for other purposes,'' requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HELMS, Ms. SNOWE, Mr. BROWN, Mr. COVERDELL, Mr. ASHCROFT, Mr. PELL, Mr. KERRY, Mr. SARBANES, and Mr. DODD, to be the conferees on the part of the Senate.

The message also announced that pursuant to Public Law 94–304, as amended by Public Law 99–7, the Chair, on behalf of the Vice President, appoints Mr. FEINGOLD to the Commission on Security and Cooperation in Europe.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled bill on Friday, December 15, 1995: S. 1060, to provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes; and the Speaker signed the following bills on Saturday, December 16, 1995: H.R. 1747, to amend the Public Health Service Act to permanently extend and clarify malpractice coverage for health centers, and for other purposes; H.R. 1977; making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1996, and for other purposes; H.R. 2099, making appropriations for the Department of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1996, and for other purposes; and H.R. 2336; to amend the Doug Barnard, Jr., 1996 Atlanta Centennial Olympic Games Commemorative Coin Act, and for other purposes.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered or on which the vote is objected to under clause 4 of rule XV. Such rollcall votes, if postponed, will be taken after debate has concluded on all motions to suspend the rules but not before 5 p.m. today.

STUTTGART NATIONAL AQUACULTURE RESEARCH CENTER ACT OF 1995

Mr. SAXTON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 33) to transfer the fish farming experimental laboratory in Stuttgart, AR, to the Department of Agriculture, and for other purposes.

The Clerk read as follows:

H.R. 33

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SECTION 1. SHORT TITLE.

This Act may be cited as the ''Stuttgart National Aquaculture Research Center Act of 1995''.

SEC. 2 TRANSFER OF FUNCTIONS TO THE SECRETARY OF AGRICULTURE.

(a) TITLE OF PUBLIC LAW 85–342.—The title of Public Law 85–342 (16 U.S.C. 778 et seq.) is amended by striking ''Secretary of the Interior'' and inserting ''Secretary of Agriculture.''.

(b) AUTHORIZATION.—The first section of Public Law 85–342 (16 U.S.C. 778) is amended—

(1) by striking ''Secretary of the Interior'' and all that follows through ''directed'' and inserting ''Secretary of Agriculture is authorized and directed'';

(2) by striking ''station and stations'' and inserting ''1 or more centers''; and

(3) in paragraph (5), by striking ''Department of Agriculture'' and inserting ''Secretary of the Interior''.

(c) AUTHORITY.—Section 2 of Public Law 85–342 (16 U.S.C. 778a) is amended by striking '', the Secretary'' and all that follows through ''authorized'' and inserting '', the Secretary of Agriculture is authorized''.

(d) ASSISTANCE.—Section 3 of Public Law 85–342 (16 U.S.C. 778b) is amended—

(1) by striking ''Secretary of the Interior'' and inserting ''Secretary of Agriculture''; and

(2) by striking ''Department of Agriculture'' and inserting ''Secretary of the Interior''.

SEC. 3. TRANSFER OF FISH FARMING EXPERIMENTAL LABORATORY TO DEPARTMENT OF AGRICULTURE.

(a) DESIGNATION OF STUTTGART NATIONAL AQUACULTURE RESEARCH CENTER.—

(1) IN GENERAL.—The Fish Farming Experimental Laboratory in Stuttgart, Arkansas, shall be known and designated as the ''Stuttgart National Aquaculture Research Center''.

(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the laboratory referred to in paragraph 1 shall be deemed to be a reference to the ''Stuttgart National Aquaculture Research Center''.

(b) TRANSFER OF LABORATORY TO THE DEPARTMENT OF AGRICULTURE.—Subject to section 1531 of title 31, United States Code, not later than 90 days after the date of enactment of this Act, there are transferred to the Department of Agriculture—

(1) the personnel employed in connection with the laboratory referred to in subsection (a);

(2) the assets, liabilities, contracts, and real and personal property of the laboratory;

(3) the records of the laboratory; and

(4) the unexpended balance of appropriations, authorizations, allocations and other funds employed, held, arising from, available to, or to be made available in connection with the laboratory.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey [Mr. SAXTON] will be recognized for 20 minutes, and the gentleman from Massachusetts [Mr. STUDDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SAXTON asked and was given permission to revise and extend his remarks.)

Mr. SAXTON. Mr. Speaker, I support the adoption of H.R. 33, introduced by our colleague from Arkansas, BLANCHE LAMBERT LINCOLN.

The purpose of this legislation is to transfer the fish farming experimental laboratory in Stuttgart, AR, from the Department of the Interior to the U.S. Department of Agriculture [USDA] and to rename that facility to more accurately reflect the true nature of the work performed there.

The bill was the subject of a hearing before my Subcommittee of Fisheries, Wildlife and Oceans on September 21, and there was overwhelming support for this measure.

This laboratory, which was first established in 1960, has conducted important research and development on various techniques for the commercial production of catfish, baitfish, and other finfishes, which have been worth in excess of $600 million.

In addition, the laboratory houses the U.S. Fish and Wildlife Service's triploid grass carp certification inspection program, which has provided services to fish producers in over 30 States.

Finally, both the administration and the Appropriations Committee have recommended that this laboratory be transferred to the Department of Agriculture. The vast majority of those who use the laboratory are farmers and it seems to me that USDA should be assigned responsibility over its functions.

I am not aware of any controversy over this legislation and I urge an ''aye'' vote on H.R. 33.

Mr. Speaker, I reserve the balance of my time.

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill, as has just been said, is utterly without controversy, although I must say it is a little bit embarrassing to be standing here debating this when approximately 4 minutes ago the agency in question was shut down because of our inability to act like grownups.

But the bill is without controversy, as the gentleman has so correctly pointed out.

I urge Members to support it.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in support of H.R. 33, which will transfer the Stuttgart Fish Farming Experimental Laboratory in Arkansas from the Department of the Interior to the Department of Agriculture.

This Laboratory has been instrumental in the development of various techniques for the commercial production of catfish, baitfish, and other finfishes worth in excess of $600 million.

Furthermore, this facility conducts extensive research on warmwater aquaculture and, since the vast majority of those who utilize Stuttgart are farmers, the Department of Agriculture is a logical home for this laboratory.

Based on the testimony received, it is clear that this transfer is not controversial and is strongly supported by all of the affected parties. I, therefore, urge an ''aye'' vote on this legislation and I compliment our distinguished colleague from Arkansas, BLANCHE LAMBERT LINCOLN, for her leadership in this matter.

Mr. STUDDS. Mr. Speaker, I yield back the balance of my time.

Mr. SAXTON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. SAXTON] that the House suspend the rules and pass the bill, H.R. 33.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SAXTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 33, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

HOUSING FOR OLDER PERSONS ACT OF 1995

Mr. CANADY of Florida. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 660) to amend the Fair Housing Act to modify the exemption from certain familial status discrimination prohibitions granted to housing for older persons.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Housing for Older Persons Act of 1995''.

SEC. 2. DEFINITION OF HOUSING FOR OLDER PERSONS.

Section 807(b)(2)(C) of the Fair Housing Act (42 U.S.C. 3607(b)(2)(C)) is amended to read as follows:

''(C) intended and operated for occupancy by persons 55 years of age or older, and—

''(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

''(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

''(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall—

''(I) provide for verification by reliable surveys and affidavits; and

''(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.''.

SEC. 3. GOOD FAITH ATTEMPT AT COMPLIANCE; DEFENSE AGAINST CIVIL MONEY DAMAGES.

Section 807(b) of the Fair Housing Act (42 U.S.C. 3607(b)) is amended by adding at the end the following new paragraph:

''(5)(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of

the exemption under this subsection relating to housing for older persons.

''(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—

''(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

''(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. CANADY] will be recognized for 20 minutes, and the gentleman from Massachusetts [Mr. FRANK] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. CANADY].

Mr. CANADY of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 660, the Housing for Older Persons Act amends the Fair Housing Act to remove the ''significant facilities and services requirement'' for seniors-only housing.

In 1988, when Congress amended the Fair Housing Act to protect families with children from discrimination, it provided an exemption for ''housing for older persons.'' ''Housing for older persons'' is defined as housing that is occupied by persons 62 years of age or older or housing intended for occupancy by persons 55 years of age or older where there are ''significant facilities and services specifically designed to meet the physical or social needs of older persons.''

The term ''significant facilities and services'' has been a source of confusion and litigation since the passage of the act. While the Department of Housing and Urban Development recently issued guidelines which may help to remove some of the confusion, the best and most certain way to solve this problem and give peace of mind to senior citizens is to pass H.R. 660.

The Senate passed H.R. 660, as amended, on December 6, 1995 by a vote of 94 to 3.

The Senate amendment makes some minor modifications to the House bill. Essentially, the heart of the legislation remains the same. In order to qualify as seniors-only housing, a facility must show that 80 percent of its units have one or more occupants aged 55 or older and meet certain other requirements.

The Senate amendment sets forth a good faith exception so that individuals who rely on the application of the seniors-only exemption will not have to pay money damages if the exemption is later found not to apply. In order to qualify for the good faith exception, the person must have no actual knowledge that the facility is ineligible for the exemption and the facility must have stated, in writing, that it complies with the requirements for the seniors-only exemption.

H.R. 660 will establish a workable and fair exemption to protect senior citizens who wish to live in retirement communities. It fairly balances the rights of families with children and the rights of seniors to choose to live among other older adults in age-restricted communities.

I want to thank my colleague from Florida, Mr. SHAW, who has worked diligently for passage of this legislation and Mr. FRANK of Massachusetts, the ranking member of the subcommittee who is also a supporter of this legislation.

In addition, to my colleagues in the Congress, I want to thank Bill Williams, president of the Federation of Mobile Home Owners of Florida and the Federation's General Counsel Lucy Warren. Thanks also go to Lori Van Arsdale, mayor of the city of Hemet, California who has tirelessly pursued this initiative.

Mr. Speaker, I urge all of my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

I support this legislation. I am pleased it has come back from the Senate in a form that is very close to what we sent them and we can accept it.

This came to my attention, this issue, as a result of people in the town of Raynham, MA, and elsewhere. They were people who lived in manufactured housing and believed they were living in a community that was for older people only but were told that, because of the way the fair housing law had been originally drafted, they could not have that assurance.

One of the problems was the fair housing law, in its understandable zeal to protect children against discrimination, and I think all of us want to reaffirm we are opposed to discrimination in housing against families with children, it would certainly ill behoove us to talk about families and children on one hand and then sanction discrimination against families with children. But what we are saying is that where you are dealing predominantly with older people, where there is a common interest in an atmosphere that may be acquired or wanted, et cetera, then it is reasonable to say no younger people, not just children; that is what we are talking about.

The law originally, in fact, required or came close to requiring that to qualify for that exemption from the anti-discrimination laws to be for elderly only, you had to have special facilities for the elderly. There was in it an unintended but unfortunate implication if you had housing only for the elderly you would have to have therapeutic facilities; a notice older people might be able to live by themselves without special health care, respirators, et cetera, did not seem a reasonable one.

What this legislation says is that if you are legitimately a community that has set itself aside for older people only, you can be certified for that purpose and not worry about discrimination, because you are trying to live up to that. On the other hand, it does not weaken, and should not weaken, the law which prevents discrimination against children. If you are housing open to anybody, if you are housing open for people in their 20's, 30's, 40's, you may not discriminate against children.

You can, under this law, it was an exemption already in the law, it makes an exemption the law already intended more workable, less subject to obfuscation or confusion. It gives people more peace of mind so that communities that are aimed at older people only, and let us also be very clear, there are people in their 70's and 80's who want to lives with younger children, with younger people, there are people who are in their 70's and 80's who prefer to live mostly with other people of their own age. People's preferences for noise, for different levels of activity will differ.

What we ought to be doing is offering people the right to choose. This legislation protects that right to choose for those older people who do prefer to live in communities of people primarily their own age. This law protects that right. It is, as I said, an example of improvement.

I should add one other thing, and this is under former Assistant Secretary Achtenberg, the Federal Department of Housing and Urban Development did the most they could within the statute to protect that right.

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It was called to their attention, they had hearings, and under Assistant Secretary Achtenberg and Secretary Cisneros, HUD did the best they could do. We did agree, however, looking at the statute, that they way to do this job of protecting the right of older people to live live among themselves, if they so chose, perfectly, it was not enough to deal with the regulatory improvements that had been made.

HUD did the best they could, but there were changes that needed to be made in the statute. This statute does them. I hope, therefore, we pass it.

Mr. Speaker, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. WOLF].

Mr. WOLF. Mr. Speaker, I rise in support of the bill, but that is not what I wanted to talk about. I did want to make a comment.

Mr. Speaker, as the budget debate continues to rage, I want to take this time to state what we ought to be doing to bring to an end this harsh and unrelenting conflict.

First of all, I believe most, if not all of us, are trying to create a better America. We just see these terribly important issues from a different perspective. Our destination is the same but we are choosing different roads to get there.

I hope we do not lose sight of what is at stake here. And that is the fiscal solvency and the continued well being of all Americans. If we do not come up with a plan to balance the budget now, how will we ever? If we do not reach agreement now, where will we find the resolve to do it next year when it will be even harder? Or the year after that?

Along the way though, we need to be fair. Shutting down part of the Government is not only unfair, it does not help either side. What is more, it is unnecessary and it hurts American taxpayers who rely on Government services and Federal employees who want to be on the job delivering those services.

This is doubly unfortunate because it is not central to debate. It adds nothing, only detracts from the key issue of agreeing to do that which we have already agreed upon in principle: To reach a balanced budget by the year 2002.

To that end, I ask the President and the Congress today, without another hour of delay, to pass whatever stopgap measure is necessary to keep the Government running. And then today, without another hour of delay, I ask the President to become personally involved in the negotiations with the Speaker and majority leader in the Senate. The two sides are closer than one might imagine from listening to harsh rhetoric, from both sides, I might add.

It is time for both sides to make commitments rather than goals. Both sides have said they want a 7-year balanced budget. Today it is time to just do it.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would say that I agree with the gentleman from Virginia. I believe we have an obligation to keep the Government running. What we ought to do is to pass a continuing resolution abstracting from all the other controversies. We will have legitimate differences of opinion over Medicare and Medicaid. But to shut down the Government, as Congress is now doing, because of those differences, is a very grave error. All we need to do is to pass a clean, that is, unencumbered, continuing resolution.

The Government should not be held hostage while one side or the other's view of Medicare or Medicaid is put forward. But that is what Congress is doing. We could do it right away, simply get, I would hope by unanimous consent, a continuing resolution at the appropriations levels that the majority has set. They have the right to do that. But shutting down the Government, as the majority is doing, until the President agrees to the abolition of a Federal program, Medicaid, and to severe cuts in Medicare, that seems to me inappropriate.

So, Mr. Speaker, I would join in the gentleman from Virginia's plea that we move, but we should be clear. What is stopping us from moving now is the argument that the President should give in on Medicaid and Medicare or else the Government will be shut down. The Constitution gives the President a right to a veto. Congress has the right to pass legislation. If two-thirds agreed, they pass it over the veto. But to say because Congress cannot muster two-thirds to make drastic changes in Medicare and Medicaid the President should therefore cave in or else we shut down the Government is wholly in appropriate.

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. HAYWORTH). The gentleman will state it.

Mr. FRANK of Massachusetts. Mr. Speaker, ordinarily we would have 1-minute speeches on a day like today. I am wondering, since we are here today, it is I assume Monday for the purposes of suspending the rules, otherwise we could not take these up, what is the intention of the Speaker with regard to 1-minute speeches today?

The SPEAKER pro tempore. It is within the Chair's discretion to decide if 1-minute speeches are to be recognized. At this juncture in the proceedings they are not.

Mr. FRANK of Massachusetts. Mr. Speaker, let me say I regret the fact that the majority leadership apparently decided not to have 1-minute speeches today.

There is a fundamental issue before us now: Should we go forward and pass an unencumbered continuing resolution reflecting the appropriations levels that the majority chooses, but not seeking to use the very operation of the Government as a weapon to try and compel the President to agree with the abolition of the Medicaid Program or reductions that he thinks are too deep in Medicare. I am sorry we are not going to get a chance to discuss that. I think we ought to do that.

Apparently, we will finish the suspensions, we will go into the infinite recess that the majority allowed themselves to call so it will not be embarrassed by trying to vote to adjourn the House. I think the time would be better spent discussing implications of the decisions to shut down the House and Senate and, more importantly, the whole Government, until the President agrees to the doing away with Medicaid.

Mr. Speaker, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Speaker, I yield myself such time as I may consume. I must respond to the gentleman's comment about the Government shutdown.

Mr. Speaker, I associate myself with the remarks made by the gentleman from Virginia. I believe we should get the Government up and running. I think it is important for us to understand that the issue here is not having the president relent in his desire to protect the Medicare and Medicaid Programs. The issue here is whether the President is going to fulfill his commitment to move forward with a plan to balance the budget within 7 years, using numbers approved by the Congressional Budget Office. The President has failed to do that.

Now, I think that is an important failure, it is a failure that we cannot simply ignore while the President points the finger at the Congress.

Now, I believe that mistakes have been made on both sides and that an effort should be made today to get the Government up and running. But the President must accept his share of the responsibility for failing to meet a commitment that he made as part of a law that he signed barely a month ago.

Mr. Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first I would say to the gentleman from Florida, and others, the President committed to a balanced budget which also protected the Medicaid and Medicare programs. So I do not think he is at all in default of his commitment.

But even if you are mad at the President, and this is the nub of it, the gentleman from Florida said, the majority leader said last week, ''We do not think the President lived up to his commitment, so therefore we will shut down the Government.'' But you are punishing the wrong party.

Even if you believe that the President is wrong, and I do not, because I think the President has said yes, I want to balance the budget in 7 years, while I protect Medicaid, while I protect people in nursing homes and while I protect Medicare, but why, if you are mad at the President, do you shut down the Government? They have not shut off the lights in the White House. He is not being evicted. Everything is still functioning over there.

That is your error. You are mad at the President, so you shut down the whole Government. He is not trying to go to the Grand Canyon tomorrow. He is not the one who is going to have to apply for a passport or worry about a Social Security check. There is a disconnection here. You are angry at the President because you think that he is being too stubborn with regard to Medicare and Medicaid. I think he is right.

But let us fight that out. Let us fight about Medicare and Medicaid and the environment and educational levels of spending without refusing to let the Governments function. Let us pass a resolution which says those departments, and there are many departments which are not functioning now because this congressional majority has passed zero bills for them. It is not a case of vetoed bill. No bill has ever gone to him from the Department of

Health and Human Services or the Department of Education or the Department of Labor. Pass legislation that allows them to function, does not try to gain advantage one way or another, and then let us argue about the other things.

So even if the gentleman was correct in his unhappiness with the President, and I do not think the gentleman is, why does the gentleman think we are punishing the President by shutting down the whole Government? That seems to me to be a very grave error.

Mr. CANADY of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, a couple of points in response. The President has three bills sitting on his desk which he could sign, which would solve a large part of the shutdown. With respect to the bill covering health and education, that bill has been held up in the Senate by the Democrats in the Senate, who have been unhappy with certain aspects of it and kept that from moving forward. So there is responsibility here that must be accepted by the President and the Democrats in the Senate.

But furthermore, I go back to the President's commitment. The President made the commitment to move forward with a plan to balance the budget in 7 years using CBO numbers. Is the President now claiming that the President cannot do that, that that is an impossible task? Why would he have accepted that commitment and made that commitment if he believed it was impossible to accomplish?

There is no answer to this question. We simply have an attempt here to play politics with the budgetary process.

I do not understand it. I will tell you, I fully believed that the President would come forward with a plan to balance the budget. I believed that there would be substantial differences between what we had submitted and what the President came up with, but he has totally failed to carry out that commitment. I think that that is something that needs to be understood. The President needs to come forward, he needs to acknowledge that that was a commitment that was made, and he needs to put a plan on the table.

If we are going to get this job done, which he said he wanted to do, he needs to tell us how he thinks it can be done. If he had a different idea about how to deal with Medicare, a different idea about how to deal with Medicaid, that should come in and be put on the table. But the plan should balance. If he thinks that savings can be made in other areas, he should make the savings in other areas. But this effort to stop the Government, to thwart the effort to balance the budget, I think is not responsible, and the President is going to be held accountable for it.

Let me say this: I agree that we should be talking with the President. We are willing to talk to the President. But the President has to show a willingness to work with us to accomplish what needs to be accomplished. But, in the meantime, I also believe that we should get the Government up and running today.

Mr. Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the President has been clear. My friend says well, if he has a different view about Medicaid and Medicare, tell us. Gee, I thought the problem the Republicans had was that he was telling people. I heard the Senate majority leader complain that the President was talking about Medicare and Medicaid.

The President does not think we should wipe out the law that was passed 30 years ago, over Republican objections by and large, that says if you are sick and old and in a nursing home, we are going to have a Federal guarantee that you will not be cut off. I think that is worth keeping.

If people do not, they are entitled to. But holding the Government hostage, shutting the Government down until the President agrees with a particular position on Medicare and Medicaid, is an unconstitutional way to do it. If one thinks there should be changes in Medicare and Medicaid, the Constitution says pass it through both Houses. If the President vetoes it, you override the veto. There is nothing in the Constitution that says kidnap the Government and shut it down.

You keep saying you are angry or disappointed in the President or unhappy with the President's position, and then you shut down the whole Government and punish a lot of other people.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Mexico [Mr. RICHARDSON].

(Mr. RICHARDSON asked and was given permission to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, one of the problems here is we do not know who we are negotiating with. We have Republicans in the Senate basically saying that they take their governing responsibilities seriously. I think they have demonstrated that. But as soon as things come to the House with our colleagues here in this body, things fall apart. It seems that House leaders are adamant about shutting the Government down, and when push came to shove, Senate Republicans kept up their habit of basically going along with the Republican leadership here.

For the second time in a month, the Republicans irresponsibly have shut the Government down. We cannot govern by blackmail. This time the Republicans were angry because President Clinton was actually trying to negotiate a balanced budget instead of agreeing to their every demand. Rather than negotiate a fair budget, the Republicans again tried to blackmail the President into accepting the unfair budget that the American people and Democrats have already rejected.

Specifically, Republicans are demanding deeper cuts in Medicare. We are trying to negotiate. Democrats are trying to negotiate. The President has tried several times to jump-start the budget negotiations with new proposals. Meanwhile, the other side wasted time issuing demands about accounting rules. For the Republicans, their technical assumptions, not their impact, on people were the only thing worth talking about.

What is it that the Republicans really want? Regardless of their rhetoric, what the Republicans really want is to force deeper cuts in Medicare and other programs to finance tax breaks for those that do not need it, cuts that merely balance the budget and are not deep enough to satisfy the other side.

□ 1230

This shutdown is manufactured, it is pointless, and it is wrong. The Republicans are using their own failure to pass appropriations bills to create a false crisis in hopes of forcing passage of an extreme misguided budget. Leaders in the House, Republican leaders in the House, have been saying all day that they would do this. Instead of playing this game designed to pass tax breaks and other favors for special interests, Senate Republicans should talk their House counterparts into moderation to get down to real negotiating with Democrats and the President to produce a fair and balanced budget.

Mr. Speaker, Republicans are shutting down the Government to force deep cuts in Medicare, Medicaid, education, and the environment. There is no reason to shut the Government down. It is wasteful, it is unnecessary, and Democrats and the American people will not be blackmailed into abandoning our priorities. Negotiating a budget deal and continuing Government operations are in no way linked.

Mr. FRANK of Massachusetts. Mr. Speaker, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have heard about cuts in a variety of programs. Let me give you one example about the cuts that are being discussed here. Reference was made to cuts in Medicare. The truth of the matter is under the Republican budget plan, spending on Medicare will increase every single year during the 7-year plan. It will go up by about 6 percent a year.

Per capita spending on Medicare, per beneficiary spending on Medicare will go up from $4,800 this year to $7,100 in the year 2002. That is not a cut.

The President calls that a cut, others have called that a cut, anybody who can understand simple arithmetic will see that is not a cut. So the American people understand that an increase from $4,800 a year to $7,100 a year per

beneficiary is an increase. The President may not think it is enough of an increase; that is a subject that can be debated, but it should be debated in terms that are sensitive to the reality of this real increase.

Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, I thank my friend for yielding me time.

There are some inescapable facts that no matter how we jockey around are confronting us. One is that we face a $4.9 trillion national debt, and the debt service on that every year is $325 billion and rising. That has to be dealt with. The people voted for change last time, not the status quo. We look to the President to help us be a partner in this quest for a balanced budget.

The President challenged us in his first State of the Union message to be specific. We have had a budget. It is specific. It balances the budget by the year 2002, and we have asked the White House for their budget, their figures. Now, the President agreed to follow the numbers, the data given by the Congressional Budget Office, but he evidently had his fingers crossed because he has yet to do that. He produces a budget status quo. It will not balance in 5 years, and it uses the Office of Management and Budget figures, not the Congressional Budget Office.

Mr. Speaker, the Washington Post, no friend of the Republican party, said that President Clinton wants to balance the budget wearing a Santa Claus suit.

Now, let us talk about the present shutdown, which we all deplore. I think it is very bad and we should try to move out of it and get the Government functioning, while, as the gentleman from Massachusetts [Mr. FRANK] has said, we argue about these issues. But the Labor, Health and Human Services bill is languishing in the Senate because the President's political party does not like its terms and conditions.

According to the Congressional Monitor this morning, the measure has been blocked by Democratic objections to conservative policy riders, but its enactment would keep two-thirds of the furloughed workers on the job. So who is to blame if we are going to assign blame? It seems to me a failure on the part of the Democratic Party to understand that the Republicans have the majority and they ought to send this bill to the President, and two-thirds of the furloughed workers could be on the job.

Other bills, about $93 billion in fiscal 1996 spending on natural resources, environmental, veterans housing, and space programs, would protect workers in those agencies from being sent home during a shutdown. The President is going to veto those.

So, Mr. Speaker, I think it is rather unfair, if not disingenuous to lay the blame at the feet of the Republicans. We promised the people a balanced budget. We are trying to get there. The President has yet, in my judgment, to negotiate in good faith and that is lamentable, but that is the reality, and all of us ought to agree to try to get the Government back in gear and try to function while these intractable policy issues get as resolved as we can resolve them in the coming weeks. But this impasse cannot be laid at our feet. The President should live up to his commitment and submit a budget that is balanced and using Congressional Budget Office figures.

Now, we hear that, yes, but he also agreed to protect Medicare and Medicaid and the environment and school loans and that sort of thing. That is fine. Let us protect those. We need to protect them. But Medicare is going broke. The trustees, on April 5, issued a report, three of whom are in the Cabinet of the President, that it will be bankrupt in the year 2002. So it certainly behooves us to protect Medicare, which is the flag behind which the Democrats are marching, by doing something about it.

We have a plan, Mr. Speaker. We have a proposal. Restrain the rate of increase from 10 percent to 7 percent. That is our plan. What is the President's? What is the President's plan to save Medicare? If he wants to protect it, he cannot protect it using words. Come up with a proposal. But the President has not done that. The Democrats have not done that yet because they do not really want to change. They want to redistribute the wealth. They want to continue business as usual, and that is the big impasse.

Mr. CANADY of Florida. Mr. Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I know the gentleman from Illinois is busy being chairman of the Committee on the Judiciary, so it may have overlooked his attention that the President has submitted a plan about Medicare. Yes, there are competing views about how much we have to cut from what existing law would allow under Medicare; and we believe that the Republican Party, led by Senator DOLE, who boasts, let us remember, of having voted against Medicare when it was first begun. Senator DOLE said, I knew it was a mistake and he is proud he voted against it to try to kill it, as did most of the Republicans then in the Congress. Well, it is not surprising these are people not sympathetic. The point is we can fight about who is right or wrong about Medicare without holding the Government hostage.

Mr. Speaker, I am interested to hear every Republican who gets up today say we agree the Government should function. Well, why do they not then listen to themselves? Pass a continuing resolution, unencumbered by greater debates, which will keep the Government going? We can then debate among ourselves about Medicare, about restrictions on the Environmental Protection Administration, about abortion and other issues.

The majority has the power and is using it to keep from the floor such a resolution. I believe if they would agree and relent in their powers of recognition, we would pass in the House a clean continuing resolution. What we have are Republican after Republican saying, yes, I think the Government should stay open, but we will not vote to allow that because we cannot win. We do not have enough votes to override objections to these very drastic policy changes we want to make, and until our colleagues agree to these drastic policy changes that cut back in Medicaid and cut back in Medicare, while we are building the B–2 bomber, while we are subsidizing NATO, while we are spending tens of billions unnecessarily in that area, we will make some cuts in these other areas.

What we are seeing here is Republicans saying how much they want to have the Government function but refusing to do it because they have said they will not do it until the President gives in to their proposals, which they do not have the votes for otherwise.

Mr. Speaker, there is a phenomenon known as the Reverse Houdini. Harry Houdini became famous because he would have people tie him in knots, and his trick was to get himself out of the knots. The Republican Party is now perfecting the Reverse Houdini. They tell us how much they want to open the Government, but they will not do it. Why? Because they have tied themselves in knots.

Houdini had other people chain him up. The Republican Party says we will tie ourselves up in knots. We will not make the Government function until the President gives in to Medicaid. Then they will come to the floor and talk about how much they wish they could get out of the knots into which they have tied themselves. That is the reverse Houdini. Tying ourselves up and then talking about how much we would love to help people if we were not tied up.

If the Republicans want to have the Government function, pass a continuing resolution that does not hold other people hostage. Again, this notion that we are somehow punishing the President by shutting down the Federal Government in other areas does not make any sense. So let us come forward with a unencumbered continuing resolution. Let us pass that and then continue the Democratic debate over Medicare, Medicaid, the environment, and education.

Mr. Speaker, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Speaker, I thank the gentleman for yielding me time. I originally came over to say I was in favor of H.R. 660, and I want to state that for the record and hope we pass that.

However, since the debate appears to have moved, I want to join in where the debate has gone. I want to say, Mr. Speaker, that in terms of reaching a balanced budget over the last several months, I have seen both sides put up some obstacles that I think should not have been done. But the impasse we have reached today is, without question in my mind, with the administration and with President of the United States, for this reason:

The President is attempting to back out of the agreement he entered into with Congress several weeks ago that we would reach a 7-year balanced budget using the same economic forecasts that deal with government revenue and the inflationary effect on government programs from the Congressional Budget Office. It should be obvious to everyone that there is nothing upon which to negotiate unless we are using the same figures, whatever those are. And both sides 3 weeks ago agreed to use those figures.

Now, the Congress passed a budget that was balanced under those figures and the President vetoed that budget. The President said that there was not enough funding in the congressional proposal for several important programs. Now, I think that is the President's prerogative, both as a matter of the constitutional law, since he is President of the United States, and under our agreement. However, the Congress then made a very reasonable request. Mr. President, if you feel that our budget does not adequately fund programs, even though we increase Medicare funding substantially, in fact along the same lines that you proposed a year ago, if you feel that Medicare or any other program should have more funding, show us from where we will get that funding. Show us your proposal for a balanced budget in 7 years using Congressional Budget Office figures. Then we can see how it is possible to reach your priorities and still arrive at a balanced budget as we all agreed 3 weeks ago that we were going to do.

That is what the President of the United States refuses to do. There is no congressional request to the President that the President agree to any particular program spending limit, much less cuts in programs. The President's proposed budget could have tax cuts or not have tax cuts, or have any spending limit he likes as long as he uses the figures from the Congressional Budget Office that we agreed to use 3 weeks ago.

In sum, Mr. Speaker, the President is relying upon the ultimate cynicism that the public will not understand what a Congressional Budget Office is so it does not make any difference. But is does, and the public will understand that.

□ 1245

Mr. CANADY of Florida. Mr. Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, how much time is remaining on both sides?

The SPEAKER pro tempore. (Mr. HAYWORTH). The Chair would inform both sides that they each have 4 minutes, respectively.

Mr. FRANK of Massachusetts. Mr. Speaker, does the gentleman from Florida [Mr. CANADY] intend to use the 4 minutes for the closing?

Mr. CANADY of Florida. Mr. Speaker, yes. I do not have any additional speakers.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland [Mr. WYNN].

Mr. WYNN. Mr. Speaker, I listen with great interest as the other side talks about why the Government shut down. Well, the fact of the matter is that it is shut down and it ought not be. It is absolutely unnecessary, and I concur with my colleague who coined a new phrase, the ''Reverse Houdini.''

Mr. Speaker, what we have here is a linkage of two unrelated issues. On the one hand is a legitimate budget debate. A balanced budget in 7 years. Actually, I would support that. On the other hand we have the operation of Government. That ought to continue.

Why then have the Republicans decided that they want to link the two and say if we cannot have our balanced budget our way, we will shut down the Government? Who is being punished?

First of all, the American taxpayer is being punished because the American taxpayer is paying for this, whether Federal Employees come to work or not. Second, Federal employees are being punished because their lives are being disrupted as they may get a delayed check, but the bills are now due.

Mr. Speaker, it is Christmas time. It should be a season of charity and a season of giving. Instead, it is a season in which Federal employees have been imposed upon yet a second time, unnecessarily so. We could actually compromise and reach a deal, but there is a group on the other side, a crowd that says, basically, ''Our way or no way.'' they want to have $245 billion in tax breaks or it is no deal.

Mr. Speaker, we could have a balanced budget in 7 years with CBO numbers if they would be willing to compromise on the size of the tax breaks, but they are unwilling to do it. Because of that unwillingness, they are saying, ''We are not going to give anyone the votes to pass a continuing resolution that would keep the government open, because you guys will not accept our big tax break.''

That is bad for our country. That is bad for our Federal workers. This is not just: We will shut the Government down; this is to say to Federal workers, ''We do not respect what you do. We do not appreciate what you do. We take it lightly, but when we put you back to work we want you to work with all the vigor and enthusiasm and commitment you can muster on behalf of the country.''

Mr. Speaker, it does not work that way. I hope we can reach a compromise in fairness to our employees, the Federal employees.

Mr. FRANK of Massachusetts. Mr. Speaker, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. BOEHNER].

Mr. BOEHNER. Mr. Speaker, I respond to my colleagues on the other side of the aisle that 4 weeks ago today the President signed a law, a law that said he would work with the Congress of the United States to enact a balanced budget over the next 7 years using the CBO. For 4 weeks the President of the United States and his minions at the White House, have done nothing, nothing to meet the commitment that they made to the American people and the commitment they made to this Congress.

Mr. Speaker, how long are we going to wait? for 30 years when things got tough in this town, we did the same thing. We blinked and we sold out the American people and our children and our grandchildren are going to get the opportunity to pay for the fact that this Congress, over the last 30 years, refused to meet its fiscal responsibility, its fiduciary responsibility to the American people by balancing the budget.

What we are saying in this Congress this year is that we are not going to do it again. We are going to keep our word to the American people who elected us last November on a commitment that we, for the first time in 30 years, would do our job and balance the budget.

Mr. Speaker, we have laid our plan on the table. All the specifics are there. All the numbers are there. All the policy is there to balance the budget over the next 7 years. When is the President going to tell us what he would like to do? When is the President going to tell us what he does not like about our bill?

The fact is the President wants to spend more money, but he will not tell us how much more he wants to spend over the next 7 years. The President, unfortunately, has gone back to his roots, back to his roots of being a liberal. He wants Government as it is. He is considering the next election and, frankly, we are sitting up here thinking about the next generation.

Mr. Speaker, this is a crisis, I will admit, and no one wants to put Federal employees through what they are going through. It is unfair to them. But quite frankly, what has gone on here for 30 years is unfair to our children and our grandchildren and it has to stop.

Mr. CANADY of Florida. Mr. Speaker, I reserve the balance of time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Ohio just said this is unfair to the Federal workers, and he and his colleagues are determined to continue to inflict the unfairness to the American workers.

Mr. Speaker, I am surprised to hear the gentleman say that the President has not told the Republicans what he

does not like about their plan. I thought he had told that to the point where they were unhappy. He thinks they are endangering the ability of Medicare to continue to fully fund what older people need. He believes that abolishing the Federal law that says Medicaid will be there and if Americans are sick and old and poor or badly disabled, their medical care will be protected, that that is a mistake.

He thinks that the extent to which they are undercutting environmental enforcement is a mistake. He thinks cutting out funds that now go to help middle-income and working-class students go to college is a mistake.

Mr. Speaker, my Republican colleagues have a right to disagree. But they why do they insist on shutting down the Federal Government? In fact, we have the Republican Party, with a majority in both Houses, complaining that the majority apparently is insufficient for them to accomplish what the Constitution says to do when we want to change policy. They have, therefore, decided that they will shut down much of the Government. They will refuse.

Mr. Speaker, let us be very clear. Within hours we could pass a continuing resolution that simply said the Government will function at whatever level of appropriation my colleagues on the other side decide, until we agree on other things. Mr. Speaker, they are the majority.

In his last State of the Union, Ronald Reagan denounced the practice of withholding basic funding for the Government as a means of exerting leverage over other policy issues. For the first time in a long time, I wish the Republican Party were true to the legacy of Ronald Reagan. Go back to his last State of the Union. He said we do not have Government by extortion, and that is what we have.

Mr. Speaker, my colleagues' quarrel, they say, is with the President. They think he wants to be too profligate. He is going to spend too much money on those sick, old people. Fine. We can fight about that. They do not think he is going to cut enough taxes for wealthy people. But do not shut the Government down to punish him.

Mr. CANADY of Florida. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have heard a lot of things in this discussion today, but we have not heard an explanation for why the President has not come forward with a plan to balance the budget in 7 years using the CBO numbers as he committed to do. There is no explanation for that.

It has simply not been forthcoming. The President has failed to keep his commitment. The President's position on this is inexplicable to me. We hear that the President is opposed to draconian cuts in medicare. Well, the draconian cut is an increase of around 7 percent a year over the next 7 years, and the President himself, or the President's wife up on Capitol Hill in the last Congress said that we should slow down the growth of spending in Medicare to a rate of 7 percent. That is what they proposed. Now they say that is a draconian cut and something that is unacceptable and it is keeping them from presenting a balanced budget plan.

Mr. Speaker, I do not understand it. The President says he is against our tax cuts for families. He says that a $500 tax credit for families with children is too much. But when he was serving on the National Commission on Children, he endorsed a $1,000 tax credit per child.

What has happened? What is the difference? I do not understand it. I think the President should go back and take a look at the commitment that he made less than a month ago, and he should follow through on what he said he would do.

I am hopeful today that all the parties will get together and we will have the Government up and running tomorrow, but I also hope that the President will get serious about his commitment to the American people, because this is something that affects the future of this country. It is time we got the job done.

Mr. Speaker, I will now say a little bit about this bill. I am very pleased that we have had the bipartisan support for the bill that we have seen. I will note that.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. CANADY] that the House suspend the rules and concur in the Senate amendment to H.R. 660.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate amendment to H.R. 660 that was just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was not objection.

AMENDING UNITED STATES CODE TO LIMIT STATE TAXATION OF CERTAIN PENSION INCOME

Mr. GEKAS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 394) to amend title 4 of the United States Code to limit State taxation of certain pension income, as amended.

The Clerk read as follows:

H.R. 394

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON STATE INCOME TAXATION OF CERTAIN PENSION INCOME.

(a) IN GENERAL.—Chapter 4 of title 4, United States Code, is amended by adding at the end the following:

"§ 114. Limitation on State income taxation of certain pension income

''(a) No State may impose an income tax on any retirement of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State).

''(b) For purposes of this section—

''(1) The term 'retirement income'' means any income from—

''(A) a qualified trust under section 401(a) of the Internal Revenue Code of 1986 that is exempt under section 501(a) from taxation;

''(B) a simplified employee pension as defined in section 408(k) of such Code;

''(C) an annuity plan described in section 403(a) of such Code;

''(D) an annuity contract described in section 403(b) of such Code;

''(E) an individual retirement plan described in section 7701(a)(37) of such Code;

''(F) an eligible deferred compensation plan (as defined in section 457 of such Code);

''(G) a governmental plan (as defined in section 414(d) of such Code);

''(H) a trust described in section 501(c)(18) of such Code; or

''(I) any plan, program, or arrangement described in section 3121(v)(2)(C) of such Code, if such income—

''(i) is part of a series of substantially equal periodic payments (not less frequently than annually) made for—

''(I) the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or

''(II) a period of not less than 10 years, or

''(ii) is a payment received after termination of employment and under a plan, program, or arrangement (to which such employment relates) maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed by 1 or more of sections 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of such Code or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply.

Such term includes any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of title 10, United States Code.

''(2) The term 'income tax' has the meaning given such term by section 110(c).

''(3) The term 'State' includes any political subdivision of a State, the District of Columbia, and the possessions of the United States.

''(e) Nothing in this section shall be construed as having any effect on the application of section 514 of the Employee Retirement Income Security Act of 1974.''.

''(b) CONFORMING AMENDMENT.—The table of sections for chapter 4 of title 4, United States Code, is amended by adding at the end the following:

''114. Limitation on State income taxation of certain pension income''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after December 31, 1995.

The SPEAKER pro tempore. The gentleman from Pennsylvania, [Mr. GEKAS] will be recognized for 20 minutes, and the gentleman from Virginia [Mr. SCOTT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, I think it would be valuable if we gave a small hypothetical to set the stage for the description of the legislation which we are about to consider. Assume that in State A, in your State, shall we say, Mr. Speaker, an individual works hard all of his working life and then at retirement age qualifies for a certain pension and then moves to another State.

It has come about over the last several years, in fact decades, that after that individual establishes domicile in a residence in another State, your State, maybe we should not use yours, maybe your State would not do this, but it is just for the sake of a hypothetical, your State reaches out across the State lines into the State into which the former resident of your State now resides, and imposes a tax on the pension income of that individual.

For several years we have had a movement within the Congress, both in the Senate and the House, and now we have come to grips with it in a reasonable way. This bill is the answer.

What it says is that when a qualified pensioner, one who has dutifully earned a pension under a qualified system set forth by previous statute and custom moves to another State, it will be beyond the powers of the original State to reach over the State borders and to attach its taxing authority onto that pension. That is the simple explanation of what we tried to do.

Mr. Speaker, there is an additional factor to it when we have a situation in which perhaps it is not a qualified pension, so-called; that is, when an arrangement has been reached between employer and employee where, although it looks like a pension, it is a kind of a one lump-sum settlement for past services rendered, et cetera, and that portion, many believe, should not be outside the purview of the taxing state, even though that individual goes outside the State for the remainder of his life.

So we have certain conditions attached here that unless that unqualified pension looks like a qualified pension with installment payments over a series of years so it really is like a pension, then in those circumstances we will be happy in this bill to accord that same protection to that pensioner as we did for the ones who qualified in a regular way.

So there is no controversy left in this legislation. We have very much appreciated the gentleman from Virginia [Mr. SCOTT] and his colleagues on our committee, who have assented to the general thrust of the legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Pennsylvania has outlined the need for the bill. Taxes ought to be as fair and equitable as possible, and the fact is that it is virtually impossible in many circumstances to calculate these taxes because people will move from State to State, they will change jobs, and if you move even within the same corporation from one State to another State, and then retire, if the States in which you worked tried to figure out which portion of that pension check was attributable to which State you worked in which you worked there, it would be virtually impossible.

In fact, the only people that are caught up with this tax right now are basically State employees where the State government is writing the check and sending it to another State and they have the money and they are withholding the money. It is very haphazard in its application and it is therefore unfair. I therefore agree with the general purposes of the bill, but I do have one or two reservations.

□ 1300

There are two significant differences between the bill that passed the House last Congress and the bill that is before us today. Last Congress' bill exempted only the first $30,000 of pension income since it was designated to help the modest-income individuals while allowing States to continue to tax their higher-income retirees. That is one point.

The other is that the bill was also limited to what are called qualified pension plans while the bill before us today is not. That is primarily where the problem lies, and some of us have reservations about the bill although we will not oppose it today.

Nonqualified plans, Mr. Speaker, are not recognized as pensions under Federal law and are not subject to any rules, regulations, guidelines or limitation in this use. They are typically used by a small number of highly compensated executives to defer taxes on large sums of compensation.

At the subcommittee hearing, for example, the director of benefits and planning at a large corporation stated that all 76,000 of their employees were in qualified plans while only 400, about one-half of 1 percent, were in nonqualified plans. A professor at the University of Georgia law school pointed out virtually all Americans are eligible for or, in fact, participated in some kind of qualified plan. The potential for tax avoidance by highly compensated individuals who funnel amounts into nonqualified plans in the last years before retirement are simply too great of a risk. These individuals would be sufficiently sheltered by Federal legislation that exempts a normally qualified plan, whatever that happens to be.

Mr. Speaker, the amendment offered in the subcommittee by the gentleman from Rhode Island [Mr. REED] attempted to draw a distinction between the taxation and qualified or nonqualified plans. That amendment passed. The manager's substitute refines that amendment so that those who are in most nonqualified plans can be properly considered.

Mr. Speaker, I believe that we have to monitor this provision of the bill closely to insure that it is not abused. However, I will not oppose the legislation and hope that it may be revised in the Senate.

Mr. Speaker, I reserve the balance of my time.

Mr. GEKAS. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. HYDE], the chairman of the Committee on the Judiciary.

Mr. HYDE. Mr. Speaker, I speak in support of H.R. 394, a bill to amend title 4 of the United States Code to limit State taxation of certain pension income.

In recent years, several States have discussed imposing an income tax on the pension income of retired individuals who worked in those States for part or all of their careers, but who no longer reside there. Some States, such as California and New York, currently do impose these ''State source'' taxes.

There is no question but that the States have constitutional authority to impose such a tax. However, State attempts to tax pension income received by nonresidents raise extraordinarily difficult questions of allocation and apportionment. They also pose substantial risks of multiple State taxation of the same income. And more basically, they subject taxes on persons who no longer vote in the taxing jurisdiction, thereby raising charges of unfairness to a population which cannot defend itself in the political arena. Taxation without representation is the cliched phrase.

Mr. Speaker, the substitute amendment before us today is the product of negotiation and compromise between private employer groups and the Federation of Tax Administrators. It represents a middle ground which each can support: in addition to covering qualified pension plans, it includes all mirror image plans because those plans are tied to the underlying qualified plans. This is a significant narrowing of the bill as introduced, which would have granted protection to all pension plans, regardless of whether they bore any relationship to a qualified plan.

Mr. Speaker, I want to commend my colleague, the gentlewoman from Nevada [Mrs. VUCANOVICH], for her leadership and perseverance in moving this legislation forward. I also want to commend the gentleman from Virginia [Mr. SCOTT], the ranking member of the subcommittee, as well as the distinguished and learned chairman, the gentleman from Pennsylvania [Mr. GEKAS], for their leadership on this issue. But it was largely due to the efforts of the gentlewoman from Nevada [Mrs. VUCANOVICH] that this delicate compromise has been reached and the product of negotiation is expected to be expeditiously passed and signed by the President.

Mr. SCOTT. Mr. Speaker, I yield 3 minutes to the gentlewoman from Florida [Mrs. THURMAN].

Mrs. THURMAN. Mr. Speaker, I want to thank the gentleman from Virginia for yielding me this time and his commitment to this bill, as well as the gentleman from Pennsylvania [Mr. GEKAS].

I cannot begin to tell you how important an issue this has become from a Florida perspective. While I was in the Florida Senate, I actually had constituents come to me to find out if there was something I could do about it in the Florida Senate. Needless to say, it was a Federal issue, and we could not do much, but the State of Florida actually was able to say that they could not hit any of their property to try to defend away this, because it became a hardship to where, in fact, some States were actually going retroactively back into some of these pensions to grab these dollars so that they could use them, really causing a major issue for these folks.

So I just want to say that I hope that the Senate takes this bill up. It is my understanding that they, too, will be looking at this and that possibly we, after we passed it last year out of the House, that now the Senate is going to look at this and that we give back to those seniors that have retired in other areas the freedom.

They are not taking anything from the State in which they are being taxed from. Their services are being delivered by an entirely different State. I believe this is a fair way to make this program work.

I just want to thank my colleagues for the work that they have done, and we will certainly let our folks know in Florida that this work has been taken care of.

Mr. Speaker, I rise today in very strong support of H.R. 394, a bill to prohibit State taxation of pensions of nonresidents.

Those of us who have worked on this issue—and I am one who has lived with it from the time I served in the Florida Senate—well, we sometimes wondered if this day would ever come.

I know the seniors in my district affected by this very unfair situation were beginning to doubt this would ever be corrected.

I want to thank Chairman HYDE and Chairman GEKAS, Mr. CONYERS and Mr. SCOTT, and everyone who has worked so hard and so long for bringing us to this moment.

Most Americans probably do not even realize that under present law, certain States with a source tax are able to tax the retirement incomes of retirees who no longer reside in that State.

Amazing! In other words, thousands of seniors across the country receive tax bills from States even though they have not lived in those States for years.

As a Representative of a State which many seniors choose for their retirement years, I can tell you without hesitation that this money grab by source tax States causes unnecessary aggravation and hardship to many people.

Taxing pension benefits of those who live in another State is anti-senior and frankly, anti-American. Your freedom to travel and retire to any part of this great country should not be limited by the tax policies of your former State of residence.

Mr. Speaker, the idea behind this bill makes good common sense. I am only sorry so many people had their incomes reduced in the time it took us to get to this point.

Mr. SCOTT. Mr. Speaker, I yield such time as she may consume to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Speaker, while we discussed the suspension of H.R. 394, it is certainly one on suspension where we have reached compromise. I want to join on record to say this seems to be a very good compromise.

I want to use it as an exemplary kind of compromise we need to work on the budget and want to use it as an opportunity to begin to talk about, as we come to suspension, is it not ideal how people, both sides, can agree on things that are essential that we do not have debate and do not have rancor.

Indeed, in the paper today where we talk about the budget standoff, the issue of Medicaid, whether we have that as a right for poor people, for senior citizens, is also something that we ought to have unanimous consent on.

I want to urge my colleagues, as we begin this discussion about the budget standoff, 250,000 employees are going to be furloughed. That is involuntary. That is a wasteful spending of money when we can take that money and those services and make sure the American people are served well.

Medicaid is an issue that we need to struggle with, both sides, and apparently on the Senate side there is some reasonable thought process that we ought to move forward with the Government and, indeed, this would be an opportunity to do that.

Mr. Speaker, again, suspension, and the American people are watching us as we talk about these bills. Are these bills important? Yes, they are. Are other bills important? Yes. Why can we not continue to some compromise on those big issues?

So, therefore, Mr. Speaker, I want to urge my colleagues that they ought to use this exemplary nature where we come on both sides of our issues around issues that are going to affect millions of Americans.

Finally, Mr. Speaker, I want to tell you this is the Christmas spirit. It is the giving. It is the giving within our means. And certainly it is not a spirit of taking. We should not be taking health care from millions of Americans in the spirit of Christmas.

Mr. SCOTT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GEKAS. Mr. Speaker, I yield myself such time as I may consume.

First, I am inserting at this point in the RECORD the technical explanation of the legislation that we are contemplating here, as follows:

TECHNICAL EXPLANATION OF H.R. 394

PRESENT LAW

Certain State laws provide that some or all retirement income is included for State income tax purposes if the income was earned within the State, even though the individual resides outside the State when the retirement income is actually received. Some States achieve this result through general rules that tax income earned within the State, whereas others have explicit provisions regarding retirement income.

EXPLANATION OF H.R. 394

H.R. 394 amends title 4 of the United States Code (entitled ''Flag and Seal, Seat of Government, and the States''), to prohibit any State, including any political subdivision of a State, the District of Columbia, and the possessions of the United States, from imposing income tax on any retirement income of any individual who is not a resident or domiciliary of the State. For this purpose, retirement income includes any income from a qualified retirement or annuity plan, a simplified employee pension, a tax-sheltered annuity plan, an eligible deferred compensation plan of a tax-exempt or State and local government, an individual retirement arrangement, a governmental plan, a trust created before June 25, 1959, and that is part of a plan funded only by employee contributions, and certain retired or retainer pay of a member or former member of the uniformed services. The term retirement income also includes income from a nonqualified deferred compensation plan, provided such income is (1) part of a series of substantially equal periodic payments made over (a) the life or life expectancy of the recipient (or the joint lives or life expectancies of the recipient and the recipient's beneficiary), or (b) a period not less than 10 years, or (2) a payment received after termination of employment under a plan, program, or arrangement (called a ''mirror plan'') maintained solely for the purpose of providing benefits in excess of limitations on contributions or benefits in the Internal Revenue Code on qualified retirement plans. The provision has no effect on the application of the provision in the Employee Retirement Income Security Act of 1974 (''ERISA'') that generally preempts State laws.

Effective date.—H.R. 394 is effective with respect to amounts received after December 31, 1995.

EXPLANATION OF MIRROR PLANS

A mirror plan is a nonqualified retirement plan maintained by an employer solely for the purpose of providing benefits in excess of certain limits on contributions and benefits contained in the Internal Revenue Code (''Code'') which apply to qualified retirement plans. The benefits provided under a mirror plan are those benefits that would have been provided under the terms of a qualified retirement plan, but for the application of the following limits on contributions and benefits:

(1) Code section 401(a)(17): limits the amount of annual compensation that may be taken into account under a qualified retirement plan for purposes of computing benefits and contributions to $150,000.

(2) Code section 401(k): limits the amount of elective deferrals (contributions at the election of the employee) that may be made by a highly compensated employee to a qualified cash or deferred arrangement (commonly called a ''401(k) plan'') according to a nondiscrimination test based on the amount of elective deferrals made by nonhighly compensated employees.

(3) Code section 401(m): limits the amounts of employer matching contributions and after-tax employee contributions that may be made to a 401(k) plan on behalf of highly compensated employees according to a nondiscrimination test based on the amount of such contributions made on behalf of nonhighly compensated employees.

(4) Code section 402(g): limits the annual amount of elective deferrals that may be

made to a 401(k) plan (or a similar arrangement) generally to $9,240 for 1995 (adjusted for inflation in $500 increments).

(5) Code section 403(b): limits the amount of annual contributions that may be made to a tax-sheltered annuity (maintained by certain tax-exempt entities and public educational organizations) generally to the excess of the product of 20 percent of compensation times the participant's years of service over the amount contributed in prior years. In addition, contributions to a tax-sheltered annuity are subject to annual limit of $9,500.

(6) Code section 408(k): limits the amount of elective deferrals that may be made by a highly compensated employee to a simplified employee pension (maintained by smaller employers) based on the amount of elective deferrals made by nonhighly compensated employees.

(7) Code section 415: limits the amount of annual benefits that may be paid from a defined benefit plan generally to the lesser of $120,000 or 100 percent of the participant's average compensation for the highest three years of compensation, and limits the amount of annual contributions that can be made to a defined contribution plan to the lesser of $30,000 or 25 percent of compensation.

Second, I want to briefly add my little voice to the debate on health care. The President, as I recall, in previous times has proposed that the Medicare spending be slowed, and that is what the Republicans have said.

The President has said we should have a tax cut for the middle class, echoed by the gentleman from Missouri [Mr. GEPHARDT], and the Republicans have said the same thing.

So, if someone is cutting someplace, it must be everybody is cutting, if that is the right word to use. But in the meantime, we believe that we are on the right track to balance the budget.

Mrs. SMITH of Washington. Mr. Speaker, I rise in strong support of legislation to eliminate the so-called source tax. This is the single-biggest issue for many of my constituents who suffer from this nefarious tax. Many of my constituents have waited many years for the source tax to be eliminated. I believe the 104th Congress will finally end this tax once and for all.

Having fought this unfair tax at the State level when I served in the Washington State Legislature, I am quite familiar with the long, hard journey that retirees have traveled to see this tax repealed.

The source tax is truly taxation without representation. By levying a source tax, States are able to target the retirement income of nonresidents even though the nonresidents receive no benefits or services in return for the assessed taxes. Thousands of residents throughout my home State of Washington have been burdened by this unfair tax.

Many of these retirees once worked in the neighboring States of Oregon or California and found Washington to be a popular place to retire since Washington did not impose a State income tax. Unfortunately, these retirees have seen a good portion of their retirement income go to another State's coffers. These retirees are paying for another State's taxes and do not even get the benefit of the services that their taxes finance.

While I want to thank everyone who has written or called in support of this legislation, I especially want to thank Jim Dawes of Sequim, WA, for his diligent efforts to repeal the source tax. He has been a tireless advocate on behalf of the countless people in Washington State who are subjected to this tax.

Ms. DUNN of Washington. Mr. Speaker, as a cosponsor of H.R. 394, I am pleased to lend my support to this bill under suspension of the rules. H.R. 394 will eliminate the so-called source tax, a misguided provision of Federal law which allows States to tax retirement income of nonresidents.

The source tax is nothing less than taxation without representation and contradicts a fundamental American principle. Not only is it wrong to allow States to tax the pensions and retirement income of Americans who have moved out of the State, but it is an unfair burden on retirees whose current State also lays claim to the income. I have heard from countless constituents who have relayed their stories of how States across the country extend their arms into the hard-earned pensions of retirees who have moved to Washington State. This is simply unacceptable.

Retirees are currently forced to somehow calculate the portion of taxes to be allocated to each State. Simply put, Mr. Chairman, retirees should not be forced to pay taxes to a State in which they no longer reside and no longer vote. I urge my colleagues to end this practice and suspend the rules and pass H.R. 394 to return fairness to taxpayers in Washington State and across the country.

Mr. HEINEMAN. Mr. Speaker, I rise today to express my strong support for H.R. 394. This legislation will provide some much needed tax relief to our Nation's retirees. Current law allows a State to tax a retiree's pension income even when they no longer live in that State. I believe that is wrong. H.R. 394 will correct this problem.

H.R. 394 prohibits States from taxing the pension income of nonresident retirees. It is unfair for some States to take money away from seniors and retirees who do not even live in that State and may have not lived there for years. This represents taxation without representation and needs to stop.

Time and again I have heard my colleagues say that we should not unfairly burden our Nation's senior citizens and retirees. I agree. As a senior, I believe this Congress needs to stand up for what is right and support this important legislation. If this Congress does not act, some States will continue to tax retirees living in other States. Do not let this injustice continue, support H.R. 394.

Mr. GEKAS. Mr. Speaker, I have no further requests for time at this time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HAYWORTH). The question is on the motion offered by the gentleman from Pennsylvania [Mr. GEKAS] that the House suspend the rules and pass the bill, H.R. 394, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GEKAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 394, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

EXTENSION OF AU PAIR PROGRAMS

Mr. SMITH of New Jersey. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1465) to extend au pair programs.

The Clerk read as follows:

S. 1465

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF AU PAIR PROGRAMS.

(A) REPEAL.—Section 8 of the Eisenhower Exchange Fellowship Act of 1990 (Public Law 101–454) is repealed.

(b) AUTHORITY FOR AU PAIR PROGRAMS.—The Director of the United States Information Agency is authorized to continue to administer an au pair program, operating on a world-wide basis, through fiscal year 1997.

(c) REPORT.—Not later than October 1, 1996, the Director of the United States Information Agency shall submit a report regarding the continued extension of au pair programs to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives. This report shall specifically detail the compliance of all au pair organizations with regulations governing au pair programs as published on February 15, 1995.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey [Mr. SMITH] will be recognized for 20 minutes, and the gentleman from Maryland [Mr. WYNN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. SMITH].

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself such time as I may consume.

The au pair program, which is reauthorized by S. 1465, is administered by the United States Information Agency, USIA, and it has been an effective means of giving young people from overseas an educational year in the United States and also providing hard-working American families with many hours per week of high-quality child care.

The au pair program is a win-win situation, and I believe it deserves to be reauthorized.

Several of our colleagues, Mr. Speaker, deserve very special credit for their persistent efforts to get this bill before us. I speak especially of the gentleman from California [Mr. BAKER], who earlier this year appeared before our Subcommittee on International Operations and Human Rights and gave compelling testimony as to the value of this important program. I would also like to single out other strong proponents, including the gentleman from Virginia [Mr. WOLF], the gentleman from Virginia [Mr. DAVIS], and the gentleman from Virginia [Mr. MORAN], and, of course, the gentleman from New York

[Mr. GILMAN], the chairman, and the ranking Democratic member, the gentleman from Indiana [Mr. HAMILTON], who are also strong proponents of this as well.

Mr. Speaker, this Congress has voted three times so far this year to reauthorize the au pair program, in the American Overseas Interests Act, which passed the House in June, the Foreign Operations Appropriations Act, and the Commerce, Justice and State Appropriations Act. Unfortunately, all three of these bills have been held up in the Senate or by the White House because of other issues, critically important issues, to be sure, but issues having nothing whatsoever to do with the au pair program.

The solution clearly is to pass a freestanding au pair reauthorization bill.

Mr. Speaker, the bill we are about to vote on has already been passed by the other body, and we are presenting this bill instead of an identical House bill so that we can get it to the President's desk immediately. The House bill was marked up Thursday in the Subcommittee on International Operations, and then the full Committee on International Relations took it up with a favorable recommendation later on the same day.

The bill has bipartisan support, and I hope it will have unanimous support of this Chamber.

Mr. Speaker, as I indicated, the Senate has already passed an identical bill. Hundreds of American families have been inconvenienced during the period since September 30 when the authorization for the au pair program inadvertently expired. This is a program we can fix today, and, as I said, the Senate has passed it, and I hope the President will sign it as soon as it crosses his desk.

Mr. Speaker, I reserve the balance of my time.

Mr. WYNN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. WYNN asked and was given permission to revise and extend his remarks.)

□ 1315

Mr. WYNN. Mr. Speaker, I am pleased that the gentleman from New York, Chairman GILMAN, and our ranking member, the gentleman from Indiana, Mr. HAMILTON, were able to work together on this bill to extend the authority of USIA to run the au pair program for another 2 years.

The bill before us would change the existing program in two respects. First, it would open the program to applicants from countries around the world; and, second, it would allow the program to be run by any qualifying organization.

I understand the au pair program brings many positive experiences both to au pairs and to their host families. The bill before us takes a prudent and practical approach to the extension of the program at this time, and on that basis I urge the adoption of the bill.

Mr. LANTOS. Mr. Speaker, I want to acknowledge the leadership which our colleague from New Jersey, CHRIS SMITH, the chairman of the Subcommittee on International Operations and Human Rights. He has played a key role in the effort to resolve the future of the au pair program. I also want to recognize the chairman of the full Committee on International Relations, Congressman BEN GILMAN of New York, and our the ranking Democratic member of the committee, Congressman LEE HAMILTON of Indiana. They have also played a critical role in dealing with this issue.

The au pair program has been in a state of uncertainty for a number of years, and it has been extended temporarily several times. The authorization for the operation of this program expired on September 30 of this year, and the legislation which we approved in this House to extend the program has not yet passed both houses of the Congress. For this reason, it is important that we act to resolve, at least temporarily again, this uncertainty for a specified period of time.

Our legislation today simply extends the program for another 2 years—until September 30, 1997—without resolving the question of its ultimate fate or ultimate future structure and existence. The legislation, however, does require a report from USIA, which should provide a basis for us to take more permanent action in 2 years.

This legislation does make improvements, and I welcome those changes. In the past the au pair program has been limited to young people from European countries. This legislation broadens the program to include other countries in Asia, Africa, and Latin America. This expansion will create additional problems for those who administer the program, but the extension of the program to all countries is a positive step.

Mr. Speaker, I strongly support international educational exchange programs, including this one for au pairs. As the founder of the California State Universities' study abroad program, I have long supported and promoted efforts to encourage young women and men to travel and learn about other countries, other languages, and other cultures. The au pair program provides an important opportunity for young people from other countries to experience American culture firsthand. These are young people who generally come from families which do not have the resources to permit them to travel independently or to study at an American university. It is important that they have this personal experience of our country.

It is extremely important, however, that the USIA and those who administer this program understand that this is an educational program—its purpose is to give young people experience with our country and its culture. Families who provide a home and food for foreign young people while they are here reasonably expect some assistance with household tasks. But this is not a program to circumvent our Nation's labor and immigration laws relating to employment in the United States by foreign citizens. This is not a program to provide free child care for upper-middle class Americans.

It is not a program to get around our Nation's labor laws. Those laws have been written for specific policy objectives, and the au pair program must be consistent with our labor laws. It is extremely important that the international educational exchange component of this program be recognized and acknowledged as being central to this legislation.

Mr. Speaker, I urge my colleagues to support this legislation.

Mr. GILMAN. Mr. Speaker, I rise in support of the motion to suspend the rules and pass H.R. 2767, a bill to extend the authorization for the au pair program for 2 years, through the end of fiscal year 1997.

I was pleased to introduce this measure because the authority for the program expired on September 30. Many families have been highly inconvenienced and child care plans have been turned upside down by the delay in the extending this program. Therefore, it is incumbent upon us to pass this extension and enable the program to continue to operate.

This is a bipartisan bill, and I want to acknowledge the key role the distinguished ranking member on our committee, my good friend from Indiana, Mr. HAMILTON, has played in drafting the bill and moving it through the committee.

A key element of this measure is to greatly broaden the regions of participation by repealing a section of the Eisenhower Exchange Fellowship Act that froze the au pair program as it existed in 1990.

In 1990 there were eight agencies administering an au pair program and it was limited to participants from Western Europe. Repealing this provision allows more agencies to run au pair programs, and opens it up to worldwide participation.

We also require the U.S. Information Agency to submit a report to Congress regarding a further extension of the program. The report must specifically address the compliance of the au pair organizations with new regulations governing the program.

I urge my colleagues to support this important extension.

Mr. WYNN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SMITH of New Jersey. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HAYWORTH). The question is on the motion offered by the gentleman from New Jersey [Mr. SMITH] that the House suspend the rules and pass the Senate bill, S. 1465.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SMITH of New Jersey. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on S. 1465.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

MAX ROSENN UNITED STATES COURTHOUSE

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1718) to designate the U.S. courthouse located at 197 South Main Street in Wilkes-Barre, PA, as the

''Max Rosenn United States Courthouse.''

The Clerk read as follows:

H.R. 1718

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States courthouse located at 197 South Main Street in Wilkes-Barre, Pennsylvania, shall be known and designated as the ''Max Rosenn United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Courthouse referred to in section 1 shall be deemed to be a reference to the ''Max Rosenn United States Courthouse''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Judge Rosenn is a life long resident of the Wilkes-Barre, PA area. He was a gifted student who graduated from college at age 19 and received his law degree at the age of 22. He commenced his law practice in Wilkes-Barre. He was appointed to the U.S. Court of Appeals for the Third Circuit in 1972. Judge Rosenn has had a long and distinguished career in public service. He was chairman of the Pennsylvania Human Relations Commission, chairman of the Governors Council for Human Services, and former member of the Pennsylvania State Council on Civil Defense. Judge Rosenn is a veteran of World War II where he served in the South Pacific. He is active in civil, religious, fraternal, and business affairs. It is a fitting tribute that we pass this bill in his honor and I urge my colleagues to support this legislation.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1718, introduced by Congressman PAUL KANJORSKI, will honor the judge Max Rosenn, whose contributions to the judicial system and to this community span decades and include literally dozens of charitable and religious organizations. In addition to being a Federal Judge, Max Rosenn is a World War II veteran, and has served at the county and State levels of government. He is particularly to be recognized for his efforts as the chairman of the Wyoming Flood Recovery Task Force which aided his community during the Hurricane Agnes floods. I join my colleague Mr. KANJORSKI in honoring Judge Max Rosenn and urge your support for H.R. 1718.

Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. KANJORSKI], the sponsor of H.R. 1718.

(Mr. KANJORSKI asked and was given permission to revise and extend his remarks.)

Mr. KANJORSKI. Mr. Speaker, I thank my good friend from Ohio for yielding me time.

Mr. Speaker. It is my pleasure to rise in support of H.R. 1718, a bill to rename a Federal courthouse in Wilkes-Barre after the Honorable Max Rosenn, a man who has been a tremendous asset to the people of northeastern Pennsylvania and to the United States of America.

I wish to thank Chairman GILCHREST and ranking member TRAFICANT for their assistance in bringing the bill to the floor today. In a show of tremendous bipartisan support and a mark of the high regard Judge Rosenn commands, the entire Pennsylvania delegation has co-sponsored the bill.

The Rosenn and Kanjorski families have been personal friends and professional colleagues for more than 60 years. I have the highest respect for Judge Rosenn as a judge, a lawyer, a community leader, and a friend.

Judge Rosenn was born in Luzerne County, PA. A gifted student, Judge Rosenn graduated from Cornell at the age of 19 and received his law degree from the University of Pennsylvania 3 years later. The judge returned home to Luzerne County and entered private practice.

Judge Rosenn's long and distinguished career in public service began in 1941 when he became assistant district attorney for Luzerne County. Max served in the South Pacific during World War II as a member of the Judge Advocate General Corps. After the war, he again returned home to Luzerne County where he continued his active civic life.

Given the time constraints of my testimony today, I am unable to list all of the organizations for which Judge Rosenn played a leadership role. They include Wyoming Valley Hospital, Wyoming National Bank, Franklin Federal Savings and Loan Association, the Shriners and Masons. Judge Rosenn is a trustee emeritus of Wilkes University and a former trustee of B'nai Brith. Northeastern Pennsylvania owes a tremendous debt of gratitude to Judge Rosenn for his tremendous work as chairman of the Wyoming Flood Recovery Task Force which performed so well in assisting our community after the devastating Agnes flood.

In addition to his local service, Judge Rosenn has an outstanding record of service to the State of Pennsylvania. He served as a member of the State Welfare Board from 1964 to 1966 and was appointed by Governor Scranton to become Secretary of Public Welfare. He performed so well as administrator of this agency of 33,000 employees charged with responsibilities for health, aging, youth, and public assistance that he was reappointed by Governor Shafer. During the Shafer administration he also served as a member of the Governor's commission to revise the public employee laws, chairman of the executive-legislative task force to restructure human delivery services, and the Committee on Children and Youth for the 1970 White House conference.

On October 7, 1970 Judge Rosenn was appointed to the U.S. Court of Appeals for the Third Circuit where he has excelled. Judge Rosenn is renowned for his fairness and wisdom and is widely respected by his colleagues and the bar. Naming this courthouse for Judge Rosenn is a fitting tribute to a man who has given so much to his community.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to concur with the statement made here by my good friend from Pennsylvania [Mr. KANJORSKI], and I wanted to recognize him for his efforts in distinguishing the career of Judge Rosenn and the fine job he has done in the Congress.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GILCHREST. I want to reiterate what the gentleman from Ohio has said. We worked together on this. it is an opportunity that should not be passed up.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rule sand pass the bill, H.R. 1718.

The question was taken; and (two-thirds having voted in favor thereof) the rules suspended and the bill was passed.

A motion to reconsider was laid on the table.

DAVID J. WHEELER FEDERAL BUILDING

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2061) to designate the Federal building located at 1550 Dewey Avenue, Baker City, OR, as the ''David J. Wheeler Federal Building.''

The Clerk read as follows:

H.R. 2061

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal building located at 1550 Dewey Avenue, Baker City, Oregon, shall be known and designated as the ''David J. Wheeler Federal Building''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the ''David J. Wheeler Federal Building''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, David J. Wheeler was a forest service employee murdered in the line of duty while inspecting a bridge at a guard station about 20 miles north of Wiser, ID. This tragedy occurred at the hands of inmates who had escaped. Mr. Wheeler was a model citizen of Baker City and was active in civil and religious affairs. He leaves behind a wife and two children. At the time of his death he was 50 years old. The town of Baker City is a small community and is tight knit in its community relations. It is fitting to name this Federal building in Mr. Wheeler's honor. I urge my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, David J. Wheeler was an active civic leader, respected civic servant, devoted husband, and in 1994 was selected as father of the year in Baker County, OR. He was very tragically killed in April of this year while working for the U.S. Forest Service in Idaho. His contributions to this community, family, and to the public will be recognized by designating the Federal building in Baker City, OR, as the David J. Wheeler Federal Building. I join Congressman COOLEY and Chairman GILCHREST in supporting H.R. 2061 and urge my colleagues also to support this bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the bill, H.R. 2061.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

FRANCIS J. HAGEL BUILDING

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2111) to designate the Social Security Administration's Western Program Service Center located at 1221 Nevin Avenue, Richmond, CA, as the ''Francis J. Hagel Building,'' as amended.

The Clerk read as follows:

H.R. 2111

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal building located at 1221 Nevin Avenue in Richmond, California, shall be known and designated as the ''Frank Hagel Federal Building''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the ''Frank Hagel Federal Building''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Frank Hagel was a well-respected former official of the Social Security Administration, region 9, headquartered in Richmond, CA. He began his Federal career as a file clerk in 1965 and through a series of promotions became Assistant Regional Commissioner for the Social Security Administration, in the area of management and budget, for region 9. He is deceased. He was a highly respected civil servant and the employees of this center support the naming of this building in his honor. I urge my colleagues to support this bill and I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join Congressman MILLER of California in his effort to recognize the career and contributions which Frank Hagel has made to his country and to his community. The major of Richmond, CA, as well as the city council are in unanimous support of this bill. Frank Hagel's Federal career has spanned over 25 years, beginning as a file clerk with the Social Security Administration in Kansas back in the early 1970's. In addition, Frank Hagel was an integral part of his community, providing many hours of volunteer service to his neighbors and fellow residents. I support and urge adoption of H.R. 2111.

Mr. MILLER of California. Mr. Speaker, I rise today in support of H.R. 2111, my legislation to rename the Federal building in Richmond, CA after the late Frank J. Hagel.

Mr. Hagel started as a file clerk for the Social Security Administration in Kansas 25 years ago. During those years, his hard work and talent resulted in numerous promotions through the technical and managerial ranks. He came to the Western Program Service Center in Richmond in 1986, and was promoted to the assistant regional commissioner for processing center operations. In 1991, he once again showed exceptional leadership during the Legionnaire's Disease outbreak among the center's staff and received his second Social Security Commissioner's Citation. Finally, in 1994, Mr. Hagel was appointed the assistant regional commissioner for management and budget, Region IX.

When Mr. Hagel passed away in January of this year, in appreciation of his leadership and in recognition of his dedicated and tireless service to the nation and his community, the employees of the Western Program Service Center and the city of Richmond expressed their wish to name the building after him with a resolution calling for the name change.

This resolution already has passed the Senate as well, under the leadership of Senator BARBARA BOXER and the minor differences between our two bills should be resolved with great ease.

Finally, Mr. Speaker, I would like to thank my colleagues for their support for this bill, in particular Representative WAYNE GILCHREST, the chairman of the Transportation Subcommittee on Public Buildings and Economic Development, and Representative JAMES TRAFICANT, the ranking minority member of that subcommittee. I appreciate their willingness to move this legislation forward.

I am honored to have been able to aid the city and the employees of the Western Regional Office and the constituents to whom Frank Hagel dedicated his life.

Mr. TRAFICANT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the bill, H.R. 2111, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A bill to designate the Federal building located at 1221 Nevin Avenue in Richmond, California, as the 'Frank Hagel Federal Building' ''.

A motion to reconsider was laid on the table.

TIMOTHY C. MCCAGHREN CUSTOMS ADMINISTRATIVE BUILDING

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2415) to designate the U.S. Customs Administrative Building at the Ysleta/Zaragosa Port of Entry located at 797 South Ysleta in El Paso, TX, as the ''Timothy C. McCaghren Customs Administrative Building,'' as amended.

The Clerk read as follows:

H.R. 2415

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States Customs Administrative Building at the Ysleta/Zaragosa Port of Entry located at 797 South Zaragosa Road in El Paso, Texas, shall known and designated as the ''Timothy C. McCaghren Customs Administrative Building''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the building referred to in section 1 shall be deemed to be a reference to the ''Timothy C. McCaghren Customs Administrative Building''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill would name the U.S. Customs Administrative Building at the Zaragosa Port of Entry in El Paso, TX as the ''Timothy C. McCaghren Customs Administrative Building.'' Tim McCaghren was a Customs inspector assigned to the border crossing at this port of entry in El Paso, TX. In February of 1990, Tim McCaghren attempted to stop and search a van at the port of entry and the driver accelerated, rammed the border crossing, and struck this dedicated public servant. He died the following day from head injuries sustained in the incident. Inspector McCaghren was a devoted father and was one of the top narcotics intradiction offers in El Paso. This bill is supported by the U.S. Customs Service and the National Treasury Employees Union. I urge my colleagues to support the legislation. I urge its adoption.

□ 1330

Mr. Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume, before yielding to the gentleman from Texas here [Mr. COLEMAN], who is retiring, in order to say on behalf of the authorizing committee, and I am sure everybody will when they have the appropriate time, that we would like to thank him as a Member of the Committee on Appropriations for working with us and for always being fair. He has been a great Member. We will sorely miss him, especially those on this authorizing committee. A lot of times people do not see the good things done for the country in these public policy areas.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. COLEMAN], who introduced this legislation.

Mr. COLEMAN. Mr. Speaker, I thank the gentleman from Ohio and the gentleman from Maryland as well for hearing this legislation. I think it is important that we do take the time, from time to time, to honor those in law enforcement who are, after all, working for us.

All of us here, as citizens, understand, and as taxpayers understand that we need people to do some of these jobs that are not always the most pleasant. Indeed, I am a strong believer that those who serve us in the Customs Service of the United States of America are oftentimes on the very front lines in dealing with crime, in dealing with drugs, in dealing with violence, and it was such an incident that occurred in 1990 that took the life of Inspector McCaghren.

Timothy C. McCaghren was a good officer, a man who had said a number of times that if he was able to stop a specific load of drugs coming into the United States, that was at least one bunch of drugs that would not get to his children. He is survived by those two children, Chastity and Brandt, and his wife, Dedra.

By naming the administrative building at this port of entry after Timothy C. McCaghren, I would say that all of us, as citizens, are doing just a small part in remembering those who are willing to sacrifice everything so that all of us can live our lives in a way that we believe we should be able to live them in these United States.

As the chairman knows as well, I have fought to obtain law enforcement status for Customs inspectors. We do not have that yet in the United States. I believe that they are that first line of defense against the smuggling I talked about of illegal drugs; but, indeed, today, they are also on the front line of defense in dealing with the issue we know as terrorism. Many inspectors carry firearms and face the constant threat of severe bodily injury; and, in this case, as we know, even death.

A recent study showed that more Customs officers died due to service-related injuries than any other group, with the exception of the Drug Enforcement Administration and the Bureau of Prison officers in our Federal Government. Earlier this session, I introduced legislation that would grant Customs inspectors a 20-year law enforcement retirement package, that which we would give to others in similar circumstances. I am hopeful that we will eventually be able to pass that legislation, and I am proud to tell my colleagues that I have had members of this particular committee, the authorizing committee, offer to cosponsor that legislation with me.

Mr. Speaker, in closing I would only say that Inspector McCaghren exemplified the hallmarks of a good Customs inspector. His attributes of public service, his humility, and his devotion to country will best be remembered by the action we take here today. And, with that, Mr. Speaker, I thank the committee and I thank the Members of this House and urge adoption of this legislation. I thank the gentleman from Ohio for his time,

Mr. TRAFICANT. Mr. Speaker, as so eloquently stated by the gentleman, Timothy McCaghren was a U.S. Customs Inspector and was killed in the line of duty. Ladies and gentlemen, killed in the line of duty in El Paso in 1990. Mr. McCaghren displayed the ultimate commitment to public service.

I would like to comment on, just briefly, and commend the gentleman from Texas [Mr. COLEMAN] on his introduction of H.R. 2415, legislation that would obtain law enforcement status for Customs inspectors, and that would deal with some of those issues that were so eloquently stated.

The life, career and contributions of Inspector McCaghren can now be honored and must be honored by designating the Customs Administrative Building in El Paso in his name and in his honor. With that, I join forces with the gentleman from Maryland [Mr. GILCHREST] in supporting this legislation and thank the gentleman from Texas [Mr. COLEMAN] for his excellent job here.

Mr. Speaker, I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume to say that I, too, want to join in the heartfelt words that the gentleman from Texas [Mr. COLEMAN] has spoken about Mr. McCaghren, his family and his friends, and the gentleman from Ohio [Mr. TRAFICANT] as well. Public servants such as Mr. McCaghren, Federal employees, set the highest example for us as elected officials to follow.

Mr. Speaker, I urge the adoption of this legislation, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HAYWORTH). The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the bill, H.R. 2415, as amended.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A bill to designate the United States Customs Administrative Building at the Ysleta/Zaragosa Port of Entry located at 797 South Zaragosa Road in El Paso, Texas, as the ''Timothy C. McCaghren Customs Administrative Building'.''.

A motion to reconsider was laid on the table.

RONALD REAGAN BUILDING AND INTERNATIONAL TRADE CENTER

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 2481, to designate the Federal Triangle Project under construction at 14th Street and Pennsylvania Avenue, NW., in the District of Columbia, as the ''Ronald Reagan Building and International Trade Center.''

The Clerk read as follows:

H.R. 2481

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal Triangle Project under construction at 14th Street and Pennsylvania Avenue, Northwest, in the District of Columbia, shall be known and designated as the ''Ronald Reagan Building and International Trade Center.''

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the building referred to in section 1 shall be deemed to be a reference to

the ''Ronald Reagan Building and International Trade Center''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] and the gentleman from Ohio [Mr. TRAFICANT] will each be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I yield such time as she may consume to the gentlewoman from California [Mrs. SEASTRAND].

Mrs. SEASTRAND. Mr. Speaker, I thank the gentleman from Maryland for yielding.

Mr. Speaker, I rise in strong support of H.R. 2481, a bill to designate the Federal Triangle building as ''the Ronald Reagan Building and International Trade Center.'' First, I would like to thank Chairman GILCHREST and Ranking Minority Member TRAFICANT for bringing this designation bill to the floor of the House for consideration.

It is a proud moment for me to be able to honor one of our country's most famous citizens and clearly my most famous constituent in this manner.

Ronald Reagan is a true optimist. He brought to our country a new way to see events, our Nation and ourselves. He lives a life of example that we can show our children and our children's children—an example that through commitment and perseverance we can accomplish anything—and we now have the opportunity to honor him in a very small way.

Ronald Reagan spoke of Main Street America as the ''millions who work so hard to support their families and keep our country together.'' He often talked of the rising tide of optimism in Main Street American and that is why it is fitting that we name this Federal building located on America's Main Street—Pennsylvania Avenue—the Ronald Reagan Building and International Trade Center.

This newest constructed Federal building located on the last undeveloped stretch of Pennsylvania Avenue between the Capitol and the White House is the largest Federal building since the Pentagon was built. The structure is designed by James Ingo Freed of Pei Cobb Freed & Partners; I.M. Pei designed the East Wing of the National Gallery of Art and Freed designed the Holocaust Museum on 14th Street and will be the centerpiece of downtown Washington. The building will dedicate 500,000 square feet for an international trade center and will attract additional business and tourism to our Nation's Capital. It seems fitting that this building that will feature free trade should bear Ronald Reagan's name.

The bill to name this building the Ronald Reagan Building and International Trade Center was introduced by myself, Chairman GILCHREST and Congressman CHRISTOPHER COX from California in October of this year. The bill has a bipartisan array of 42 cosponsors and its companion in the Senate was introduced by Senator BOB DOLE on the same day with a bipartisan array of 12 cosponsors, including Senator MOYNIHAN from New York who authored the original act authorizing the building's construction. The designation bill has been received with an appreciative response from the Reagan family and to paraphrase from a note I received from former First Lady Nancy Reagan she and the former President are truly grateful for all that is being done on this designation bill to honor the Reagan name.

The Federal Triangle building is being constructed to meet Federal specifications and will have a lifespan of 150 to 200 years; it will be one of the most stately Federal buildings on our nation's mainstreet; the building will be another architectural landmark for our Nation's Capital. What could be more fitting than to name a building that will house an International Trade Center after a President who stood so strongly for free and fair trade. A building with such a dignified architectural presence, centered in such a prominent location within our Nation's Capital should be named after such a dignified and prominent former President Ronald Wilson Reagan.

Again, I thank the House for considering this designation bill which preserves the optimism contained within the Reagan legacy on our Nation's mainstreet—Pennsylvania Avenue—for centuries to come.

Mr. GILCHREST. Mr. Speaker, I thank the gentlewoman from California.

Mr. Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

This is one time that we just do not want to say no. The former First Lady's just say no. Not this time. I think if there is one change I would like to make in the bill, I did not really look at it that much, but it is the Ronald Reagan bill and International Trade Center, and I would like to have seen it named the Ronald Reagan International Trade Center.

One little thing maybe also off-cuff. One thing the former President stated that I always, always thought made a lot of sense, and it has been so prophetic and been such a great service to this Nation, he said we should always negotiate from a position of strength, and how true it is and I want to commend the former President on that. I think that has helped our Nation greatly, and his son, Michael, by the way, who had done much to make free trade fairer trade, and I think that is important here.

So I want to join forces with the gentlewoman from California [Mrs. SEASTRAND] in honoring our former President by designating this landmark building in our Nation's Capital in his honor. Negotiate from a position of strength. And ladies and gentlemen, I think the Gipper's comments should be analyzed now in our trade dilemma, and maybe we should be listening to young Michael Reagan, who has analyzed this quite strongly.

So, Mr. Speaker, I join forces on the bill. I know there are some technical reasons for the naming of it, but I hate to see the name diluted, but, nevertheless, I know there are strategic reasons for that. I wholeheartedly support this bill and join the gentlewoman from California [Mrs. SEASTRAND] and the gentleman from Maryland [Mr. GILCHREST] in passing this bill.

Mr. Speaker, I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume to thank the gentleman from Ohio [Mr. TRAFICANT] for his words. I thank the gentlewoman from California [Mrs. SEASTRAND] for her initiative, and I think all of us joining hands to thank Mr. Ronald Reagan for being a visionary, an optimistic President of the United States that preserved our idealistic fundamental freedoms.

Mr. Speaker, I urge adoption of this bill and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the bill, H.R. 2481.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

VEACH-BALEY FEDERAL COMPLEX

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2504) to designate the Federal building located at the corner of Patton Avenue and Otis Street, and the U.S. courthouse located on Otis Street, in Asheville, NC, as the Veach-Baley Federal Complex.

The Clerk read as follows:

H.R. 2504

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal building located at the corner of Patton Avenue and Otis Street, the United States Courthouse located in Otis Street, in Asheville, North Carolina, shall be known and designated as the ''Veach-Baley Federal Complex''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the buildings referred to in section 1 shall be deemed to be a reference to the ''Veach-Baley Federal Complex''.

□ 1345

The SPEAKER pro tempore (Mr. HAYWORTH). Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, this split designation of the Federal complex in Asheville, NC, would honor two outstanding residents of Asheville. Jack Veach was nationally known for his work as a forester and led efforts to the creation of the Cradle of Forestry Discovery Center which is used to teach forestry and environmental stewardship. He was active in civic affairs in Asheville and served a chairman of the United Way.

Judge James Baley was a lawyer, State representative, naval officer, a deacon in his church, a U.S. attorney, and a judge. He was active in civic affairs as well as lending his time to such diverse activities as the Daniel Boone Council of the Boy Scouts of America. I urge my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I join Congressman TAYLOR of North Carolina in supporting H.R. 2504, a bill to designate the Federal building and courthouse in Asheville NC as the Veach-Baley Federal Complex. John Veach and James Baley are two North Carolinians whose record of public service are commendable and deserving of this honor. In the serving in the judicial system Judge Baley has worked at the appeals court level as well as the special judge for the superior court. ''Jack'' Veach was a leader and acknowledged expert in forest conservation activities. The careers of these two men are worthy and deserving of this designation. I urge support for H.R. 2504.

Mr. Speaker, I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I have no further speakers. I urge the adoption of this legislation, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the bill, H.R. 2504.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

HOWARD H. BAKER, JR. UNITED STATES COURTHOUSE

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2547) to designate the United States courthouse located at 800 Market Street in Knoxville, TN, as the ''Howard H. Baker, Jr. United States Courthouse''.

The Clerk read as follows:

H.R. 2547

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States courthouse located at 800 Market Street in Knoxville, Tennessee, shall be known and designated as the ''Howard H. Baker, Jr. United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in section 1 shall be deemed to be a reference to the ''Howard H. Baker, Jr. United States Courthouse''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, this bill would designate the newly acquired building in Knoxville, TN as the ''Howard H. Baker, Jr. United States Courthouse''. In the 103d Congress legislation was enacted to name the United States courthouse to be built in Knoxville after this distinguished former Senator and national leader. However, in an effort to save money, a suitable building was purchased at a different location in Knoxville. The bill will designate that building in honor of Senator Baker. Senator Baker was a pioneer in Republican politics in the State of Tennessee. He was elected to the U.S. Senate in 1966 and served until his retirement in 1984. At the time of his retirement he was at the pinnacle of his congressional career as majority leader of the U.S. Senate. In 1987, Senator Baker served as White House Chief of Staff to President Reagan, to bring a steady hand to the White House following the Iran/Contra incident. Senator Baker has been honored by being awarded the Medal of Freedom, among other prestigious awards. He is still active at his law firm and is a most respected former member. It is fitting that we name this building in honor of this public servant. I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I want to join with the gentleman from Tennessee [Mr. DUNCAN] in support of naming this Federal courthouse in Knoxville after Howard H. Baker, Jr. I would like to say as now the chair of the Subcommittee on Aviation, the gentleman from Tennessee has worked tirelessly on this effort. He has also worked very hard in the Subcommittee on Aviation, and he has done a great job.

Mr. Speaker, I would also like to inform the gentleman from Maryland [Mr. GILCHREST] that in the 82d Congress, Howard Baker was a member of the Public Works Committee. He was very aware of many of the problems of infrastructure and the needs of our country, as evidenced later by his distinguished service.

Mr. Speaker, H.R. 2547, introduced by Mr. DUNCAN of Tennessee, will name the Federal courthouse in Knoxville, TN after Howard H. Baker, Jr., a man whose public record almost makes his name a household word in the annals of public service. Howard Baker served his country in the United States Navy during WW II, the United States Senate, the White House, the United Nations, and numerous boards and commissions. It is with great admiration for Howard Baker's devotion and dedication to public service that I join with Mr. DUNCAN in supporting H.R. 2547.

Mr. Speaker, I reserve the balance of my time.

Mr. GILCHREST. Mr. Speaker, I thank the gentleman from Ohio [Mr. TRAFICANT] for that interesting bit of history about a former member of the Public Works Committee.

Mr. Speaker, I have no further speakers and I urge the adoption of the bill.

Mr. Speaker, I yield back the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I yield such time as he may consume to the gentleman from Mississippi [Mr. MONTGOMERY], ''The General,'' whose name is associated with so many things associated with veterans. The gentleman is leaving this Congress, and we love him dearly. This Congress will not be the same. I am sure he has an awful lot of memories of fine Americans, such as himself and like Howard Baker.

(Mr. MONTGOMERY asked and was given permission to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, I thank the gentleman from Ohio for his very kind remarks. I know the gentleman was a very outstanding sheriff and law enforcement officer before he came to the Congress, and I appreciate what he said.

Mr. Speaker, but I am here to say that I think it is very appropriate designating this United States courthouse to be named the Howard H. Baker Courthouse. I have known Senator Baker for a number of years. I had the privilege, I was before him, but we went to the same school in Tennessee.

This is well deserved and I congratulate the gentleman from Maryland [Mr. GILCHREST] and the gentleman from Ohio [Mr. TRAFICANT] for bringing this bill to the floor. I fully support it.

Mr. TRAFICANT. Mr. Speaker, I urge an ''aye'' vote. I commend the gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Mr. Speaker, I rise in support of H.R. 2547, a bill to designate the courthouse at 800 Market Street in Knoxville, TN, the Howard H. Baker, Jr. United States Courthouse. I am proud to be the sponsor of this bill, along with the other Members of the Tennessee delegation, and commend and thank Chairman GILCHREST. This legislation is a fitting tribute to Senator BAKER's extraordinary career and public service.

As you know, similar legislation to construct a new courthouse became public law in the 103d Congress. However, rather than build a new courthouse, GSA has decided, at my urging, to save the taxpayers money and move into an existing building. Therefore, it is necessary to rename the building, and I urge my colleagues to support this bill.

Senator Baker was first elected to the U.S. Senate in 1966. He was the first Republican

ever popularly elected to the U.S. Senate from Tennessee, and he won reelection in 1972 and 1978. Senator Baker served as minority leader of the Senate from 1977 to 1981 and majority leader from 1981 to 1985 when he chose to retire.

In 1987, then President Reagan asked Senator Baker to serve as Chief of Staff to the President, at a time when the administration needed steady and seasoned leadership during the Iran-Contra controversy.

In 1982, Senator Baker received the Jefferson Award for Greatest Public Service Performed by an Elected or Appointed Official. In 1984, Senator Baker received the Presidential Medal of Freedom.

Since leaving Public Service, Senator Baker has been elected to numerous boards of directors of U.S. corporations. He is the recipient of honorary degrees from Yale, Dartmouth, Georgetown, Bradley, Pepperdine, and Centre College. He is currently a partner in the law firm of Baker, Donelson, Bearman and Caldwell.

I am sorry to say Senator Baker's wife, Joy, passed away recently after a long and courageous battle with cancer.

Mr. Chairman, I simply would say that Senator Howard H. Baker, Jr. is one of the greatest statesmen in the history of the State of Tennessee. He has been recognized a great deal here in Washington, having the former rooms of the Library of Congress named after him. But he has not received that same recognition in Tennessee. Naming this Federal building after him will be a very fitting tribute to a very great American.

I urge my colleagues to support this bill in honor of my good friend and fellow Tennessean, Howard H. Baker, Jr.

Mr. TRAFICANT. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the bill, H.R. 2547.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

VINCENT E. MCKELVEY FEDERAL BUILDING

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2556) to redesignate the Federal building located at 345 Middlefield Road in Menlo Park, California, and known as the Earth Sciences and Library Building, as the ''Vincent E. McKelvey Federal Building''.

The Clerk read as follows:

H.R. 2556

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION.

The Federal building located at 345 Middlefield Road, and Menlo Park, California, and known as the Earth Sciences and Library Building, shall be known and designated as the ''Vincent E. McKelvey Federal Building''.

SEC. 2 REFERENCES.

An reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the ''Vincent E. McKelvey Federal Building''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICIANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, I thank the gentlewoman from California [Ms. ESHOO] for introducing this legislation.

Mr. Speaker, Vincent McKelvey was a dedicated public servant who worked for the U.S. Geological Survey from 1941 until his death in 1987. Mr. McKelvey was a native of Pennsylvania and received degrees from Syracuse University and from the University of Wisconsin. He was internationally recognized for his scientific work and received numerous awards and honors for his contributions to the geological sciences. Dr. McKelvey was the author of about 125 scientific articles dealing with the geology of many minerals and for his work received many honors and awards. During his tenure at the USGS, he was Director from 1971 to 1978. I urge my colleagues to support this legislation to honor this dedicated civil servant.

Mr. Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume. Dr. Vincent E. McKelvey has enjoyed a long, highly productive Federal career as a renowned geologist for the U.S. Geological Survey. He has conducted pioneering work in energy conservation and his outstanding work as a geologist, was recognized in 1978, when a 7,000 foot high mountain peak in Antarctica was named in his honor. I join with Congresswoman ESHOO in supporting H.R. 2556, a bill to designate the Geological Survey building in Menlo Park, CA, as the Vincent E. McKelvey Federal Building.

Mr. Speaker, I concur with the statement of the gentleman from Maryland [Mr. GILCHREST], and I urge an ''aye'' vote.

Mr. Speaker, I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I would like to echo the words of the gentleman from Ohio [Mr. TRAFICANT] and maybe some day the gentleman and I can visit the 7,000 foot peak in the Antarctic. It would be a trip to remember.

Mr. Speaker, I urge adoption of the legislation.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the bill, H.R. 2556.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

JAMES L. FOREMAN UNITED STATES COURTHOUSE

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2689) to designate the United States Courthouse located at 301 West Main Street in Benton, IL, as the James L. Foreman United States Courthouse.

The Clerk read as follows:

H.R. 2689

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States Courthouse located at 301 West Main Street in Benton, Illinois, shall be known and designated as the ''James L. Foreman United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the building referred to in section 1 shall be deemed to be a reference to the ''James L. Foreman United States Courthouse''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I thank the gentleman for Illinois [Mr. POSHARD] for introducing this legislation. Mr. Speaker, Judge Foreman is a lifelong resident of Massac County, IL and has had a distinguished career in the legal profession. In 1972 Judge Foreman was appointed by President Nixon as a United States District Judge. Twenty years later Judge Foreman took senior status where he maintains an active case load today. During his tenure, he was chief judge for 14 years. He is known for his fairness and his administrative, as well as judicial, skills and was instrumental in creating a court management system to relieve the court of administrative burden in the judicial proceedings. I urge my colleagues to support the bill.

My Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume. H.R. 2689 would recognize the career contributions of Judge James L. Foreman of Illinois. He became instrumental in instituting formal case management practices long before it was mandatory. He has served the Federal judicial system with distinction and diligence since 1972 after serving as an assistant attorney general for the State of Illinois.

Mr. Speaker, I join the gentleman from Illinois [Mr. POSHARD], my friend who is on his way over here, from what I understand, in supporting this bill. I

also support comments made by the gentleman from Maryland [Mr. GILCHREST] and urge passage of this legislation.

Mr. Speaker, I reserve the balance of my time, in the event the gentleman from Illinois should pop in here at the last second.

Mr. GILCHREST. Mr. Speaker, I thank the gentleman from Ohio for his words, and I thank the gentleman from Illinois [Mr. POSHARD] for introducing this legislation. I urge its adoption.

Mr. Speaker, I yield back the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. POSHARD], a man who is never to be denied; a man without peer who has worked hard on this legislation. He is a very, very valuable member of our Committee on Transportation and Infrastructure. Now that the gentleman has caught his breath, I yield to him.

Mr. POSHARD. Mr. Speaker, I rise today in support of H.R. 2689, a bill to name the U.S. Courthouse in Benton, IL the ''James L. Foreman Courthouse.'' I introduced identical legislation during the 103d Congress, and am pleased to note that it passed the House by voice vote. Unfortunately, the Senate did not act on the bill before it adjourned.

Judge Foreman has had an outstanding career on the Federal bench. He was appointed to the Federal bench in 1972, after serving as an assistant attorney general for Illinois and Massac County State's attorney from 1960–1964. He became chief judge in 1978 and continued in this position until 1992, when he became a senior district judge.

Originally, the district was known as the eastern district of Illinois because it covered a large area ranging from the outskirts of Chicago south to Champaign-Urbana, and covered the entire southern section of Illinois. At Judge Foreman's suggestion, the boundaries of the Federal judicial districts in Illinois were reviewed and the present judicial district was renamed the southern district, which is composed of the 38 southernmost continuous counties of the State.

Judge Foreman was instrumental in instituting a formal case management system long before the concept was mandated for all Federal courts. The southern district also established court facilities at the maximum security U.S. Penitentiary at Marion, IL, in order to accommodate the special security concerns involved with these prisoners.

Judge Foreman has also served on the Judicial Resource Committee of the Judicial Conference of the United States. On several occasions he has been appointed to sit by designation in cases before the U.S. Court of Appeals for the Seventh Circuit and in the U.S. District Court for the Western District of Kentucky.

Judge Foreman has served with honor and distinction during his tenure on the Federal bench. I believe it would be most appropriate to recognize Judge Foreman's many contributions by naming the courthouse in Benton, IL, for him.

I want to thank Public Buildings and Economic Development Subcommittee Chairman GILCHREST, its ranking member Mr. TRAFICANT, Transportation and Infrastructure Chairman SHUSTER, and ranking member Mr. OBERSTAR for their support of this important legislation.

□ 1400

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend the gentleman from Illinois [Mr. POSHARD] and his work and his effort, and I urge passage of this legislation.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HAYWORTH). The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the bill, H.R. 2689.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

SEYBOURN H. LYNNE FEDERAL COURTHOUSE

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 369) to designate the Federal courthouse in Decatur, AL, as the ''Seybourn H. Lynne Federal Courthouse,'' and for other purposes.

The Clerk read as follows:

S. 369

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal Courthouse in Decatur, Alabama, is designated as the ''Seybourn H. Lynne Federal Courthouse''.

SEC. 2. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the building referred to in section 1 is deemed to be a reference to the Seybourn H. Lynne Federal Courthouse.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill would honor Judge Lynne who, at age 87 is the longest serving Federal judge in the country. He was appointed by President Truman in 1946 as a United States district judge. Seven years later he became chief judge for the northern district of Alabama and took senior status in 1973. It is my understanding that Judge Lynne is seriously ill. There is a ceremony scheduled this month to name this U.S. courthouse in his honor so that he may receive this recognition while still serving on the bench. I urge my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Congressman CRAMER of Alabama has introduced a bill to honor Judge Seybourn Lynne, the country's longest serving Federal Judge. I join him in his efforts to acknowledge the contributions of Judge Lynne's 49 years of judicial service. Judge Lynne is well known for his wisdom, negotiating skills, and perseverance. Even in senior status, which he took in 1973, Judge Lynne continues to carry a full case load and works in a timely and efficient manner. I urge adoption of S. 369 to honor Judge Seybourn H. Lynne.

Mr. Speaker, I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from Ohio [Mr. TRAFICANT] for his stirring words on someone who has decided to make wise use of their time. We commend the judge, and he also sets a fine example for us.

I strongly urge adoption of this legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the Senate bill, S. 369.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GILCHREST. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bills just passed, H.R. 1718, H.R. 2061, H.R. 2111, H.R. 2415, H.R. 2481, H.R. 2504, H.R. 2547, H.R. 2556, H.R. 2689, and the Senate bill, S. 369.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

EXTENSION OF PERIOD OF APPLICABILITY OF ENROLLMENT MIX REQUIREMENT UNDER DAYTON AREA HEALTH PLAN

Mr. BURR. Mr. Speaker, I move to suspend the rules and pass the bill

(H.R. 1878) to extend for 4 years the period of applicability of enrollment mix requirement to certain health maintenance organizations providing services under Dayton area health plan, as amended.

The Clerk read as follows:

H.R. 1878

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENDING PERIOD OF APPLICABILITY OF ENROLLMENT MIX REQUIREMENT TO CERTAIN HEALTH MAINTENANCE ORGANIZATIONS PROVIDING SERVICES UNDER DAYTON AREA HEALTH PLAN

Section 2 of Public Law 102–276, as amended by section 13644 of the Omnibus Budget Reconciliation Act of 1993, is amended by striking ''December 31, 1995'' and inserting ''December 31, 1999''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina [Mr. BURR] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. HALL] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. BURR].

Mr. BURR. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BURR asked and was given permission to revise and extend his remarks.)

Mr. BURR. Mr. Speaker, I rise in support of H.R. 1878.

The Dayton area health plan is a Medicaid managed care demonstration project in Dayton, OH. On December 31 of this year, the Medicaid waiver under which the plan currently operates will expire.

H.R. 1878 extends for 4 years the waiver of the 75/25 percent enrollment mix which requires HMO's serving public recipients to attract 25 percent of their customers from the commercial market.

Since this program has been successful as a HCFA-approved Medicaid reform initiative, Congress has waived the enrollment mix twice in the past. Moreover, the Congressional Budget Office has also estimated that the Dayton program saves taxpayers approximately $1 million per year.

For these reasons, I ask my colleagues to join me in support of this program.

Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 1878, a bill to extend the waiver of the 75/25 percent enrollment mix requirement for the Dayton Area Health Plan. The Dayton Area Health Plan is a Medicaid managed care initiative. For more than six years, it has been providing quality health care to over 24,000 enrollees in Aid to Dependent Children, Healthy Start, and General Assistance programs in Montgomery County, Ohio.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272) instituted a requirement that a Health Maintenance Organization (HMO) be able to attract at least 25 percent commercial enrollees in order to be eligible for reimbursement under Medicaid. The theory was that the ability to attract paying customers would ensure quality care for Medicaid beneficiaries. However, the Dayton Area Health Plan ensures quality by encouraging competition between the HMO's that participate.

Congress has twice recognized the value of the Dayton Area Health Plan. With bipartisan support, we have been able to get at least 2 waivers on this over the last few years.

Mr. Speaker, the current waiver for the Dayton Area Health Plan expires at the end of this year. H.R. 1878 will provide relief until a State-wide plan called OhioCare goes into effect.

I would like to thank the bill's sponsor, Mr. HOBSON; the chairman and ranking member of the Commerce Committee, Messrs BLILEY and DINGELL; and the chairman and ranking member of the Health and Environmental Subcommittee, Messrs. BILIRAKIS and WAXMAN, for their support of this effort.

Mr. Speaker, I reserve the balance of my time.

Mr. BURR. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. HOBSON].

Mr. HOBSON. Mr. Speaker, I want to thank the Republican leadership for scheduling this bipartisan bill so we can keep the Dayton Area Health Plan running into the new year. Also, I want to thank TONY HALL—together we've extended this waiver twice already.

I was the Ohio Senate health chairman in charge of overseeing the establishment of a Medicaid managed care demonstration project in Dayton, OH. The Dayton Area Health Plan has operated successfully under a waiver from certain Federal Medicaid requirements for nearly a decade.

The current waiver expires December 31, 1995, and, unless the waiver is extended, the Dayton Area Health Plan will be forced to close its doors to 25,000+ low-income beneficiaries.

H.R. 1878 provides the temporary regulatory relief that's necessary to allow the Dayton Area Health Plan to continue to serve its customers into the new year.

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just say that I appreciate the support of the gentleman from Ohio [Mr. HOBSON] and his long-term support and direction that he has given to this important piece of legislation. We have worked together very carefully and in a very good way over the past few years to really help with this plan. It has been a good plan, we think, a pioneer plan, that has saved a lot of money for the taxpayers, not only in Dayton, OH, but for the country.

Mr. Speaker, I yield back the balance of my time.

Mr. BURR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I also agree that this has been a successful plan. It is one we need to continue to waive in this particular case.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina [Mr. BURR] that the House suspend the rules and pass the bill, H.R. 1878, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: ''A bill to extend for 4 years the period of applicability of enrollment mix requirement to certain health maintenance organizations providing services under Dayton Area Health Plan.''.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BURR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1878, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no obligation.

ALBERT V. BRYAN UNITED STATES COURTHOUSE

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 965) to designate the United States courthouse for the eastern district of Virginia in Alexandria, VA, as the Albert V. Bryan United States Courthouse.

The Clerk read as follows:

S. 965

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF ALBERT V. BRYAN UNITED STATES COURTHOUSE.

(a) NEW COURTHOUSE.—

(1) IN GENERAL.—The Federal building located at Courthouse Square South and Jamieson Avenue in Alexandria, Virginia, shall be known and designated as the ''Albert V. Bryan United States Courthouse''.

(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in paragraph (1) shall be deemed to be a reference to the ''Albert V. Bryan United States Courthouse''.

(b) OLD COURTHOUSE.—

(1) IN GENERAL.—The Federal building located at 200 South Washington Street in Alexandria, Virginia,shall not be known and designated as the ''Albert V. Bryan United States Courthouse''.

(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building known and designated prior to the effective date of this section as the ''Albert

V. Bryan United States Courthouse'' shall be deemed to be a reference to the Federal building referred to in paragraph (1).

(c) EFFECTIVE DATE.—This section shall become effective on the date of the completion of the construction of the Federal building referred to in subsection (a)(1).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland [Mr. GILCHREST] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Judge Bryan is a legend in the judicial community. He was first appointed to the U.S. district court in 1947 by President Truman and in 1961 he joined the court of appeals. He is best known for his 1958 order that four African-American students be enrolled in a northern Virginia all-white junior high school. This resulted in the first desegregated school in Virginia history. This bill has broad bipartisan support having passed the other body earlier this year. A companion bill was introduced and considered by the Subcommittee on Public Buildings and Economic Development earlier this year wherein we heard testimony from the Honorable JIM MORAN, who is a distinguished Member from the other side.

It is fitting that Congress name this new courthouse in Alexandria VA, in Judge Bryan's honor. I urge support for this legislation.

Mr. Speaker, I reserve the balance of my time.

□ 1415

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Judge Albert V. Bryan's judicial career covered 37 years. It was characterized by fairness, firmness, and thoroughness. He was admired by his colleagues for his modesty and gentleness, and nobody could forget the dry wit. Everyone greatly respected his intelligence and integrity. His landmark work, as stated by the gentleman from Maryland [Mr. GILCHREST], to support integration of public schools in Virginia, was ultimately incorporated into the historic Supreme Court decision Brown versus Board of Education.

The gentleman from Virginia [Mr. MORAN], a highly respected member of our caucus, has done yeoman's work in bringing this legislation to the floor. Without his help we may not have been having it here today.

I want to commend the gentleman from Virginia [Mr. MORAN] for his leadership in a lot of areas in this Congress. He is to be commended for his support of this bill, and I join the gentleman in supporting this bill, to honor the life and career of Judge Bryan by designating the new courthouse to be dedicated in Alexandria, VA, as the Albert V. Bryan United States Courthouse.

Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Speaker, I thank the very distinguished ranking minority member of this subcommittee from Ohio, who I may also say is a good friend, and I thank him for his thoroughness and fairness as well. The gentleman is someone Judge Bryan would greatly enjoy and respect.

I want to thank my good friend as well, the very distinguished chairman of this subcommittee, the gentleman from Maryland [Mr. GILCHREST]. The gentleman does a wonderful job representing his constituency, but also the interests not only under his subcommittee, but of the country, and has done the kind of terrific work, particularly in the environmental area, which is just what Judge Bryan would care about.

In his 37 years on the Federal bench, Judge Bryan built a record as a legal conservative and a strict constructionist. That is why he was able to bring about the very dramatic changes in terms of school desegregation in Virginia, because of the respect that he had earned throughout his career. He was renowned for his fairness, his firmness, and his thoroughness. As has been said, of the 322 opinions written as a Circuit Judge and the 18 opinions written as a U.S. District Judge, he was reversed in only four cases. That is a record that very, very few can equal.

His colleagues knew him as a courtly, conservative Virginia gentleman, whose personal style was low-key, modest and polite, often with a dry wit. According to his son, U.S. District Judge Albert V. Bryan, Jr., Judge Bryan, Sr., thought of the court as a jewel of the Constitution.

Following through on the jewel metaphor, the Washington Post editorial that marked the death of Judge Bryan stated:

> that those who knew the senior Judge Bryan might well add that this appraisal came from an expert who valued that gem and protected it with integrity and eloquence.

With great reverence and pride, I am very pleased to be part of something that would have mattered a great deal to him, to have his name on a Federal Courthouse. I know it matters a great deal to his family and to the community that he served.

That courthouse will open next month. I hope the distinguished gentleman from Maryland and the distinguished gentleman from Ohio can join us, if they can, and even the very distinguished staff. If they can make it, we would love to have join us. I very much appreciate this legislation going forward today.

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I concur with the comments made by the gentleman from Virginia [Mr. MORAN] and our distinguished chairman. I want to echo those comments as far as conservation work done by the distinguished chairman. I wanted to thank the gentleman for helping with this legislation today.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when I say thank you, I do not want people to take it lightly, because it is a depth that is pretty deep, when I add my thanks to the gentleman from Ohio [Mr. TRAFICANT] for his help and work on this subcommittee and this legislation. I thank the gentleman from Virginia [Mr. MORAN] for bringing this to our attention, because the gentleman from Virginia knows all too well that this Nation is better as a result of Judge Bryan. I strongly urge the support of this legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HAYWORTH). The question is on the motion offered by the gentleman from Maryland [Mr. GILCHREST] that the House suspend the rules and pass the Senate bill, S. 965

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GILCHREST. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on S. 965.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 2 o'clock and 20 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1626

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HAYWORTH) at 4 o'clock and 26 minutes p.m.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries.

BASING BUDGET NEGOTIATIONS ON MOST RECENT TECHNICAL AND ECONOMIC ASSUMPTIONS OF CONGRESSIONAL BUDGET OFFICE

Mr. KASICH. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 132) affirming that budget negotiations shall be based on the most recent technical and economic assumptions of the Congressional Budget Office and shall achieve a balanced budget by fiscal year 2002 based on those assumptions.

The Clerk read as follows:

H.J. RES. 132

Whereas on November 20 the President signed legislation (Public Law 104–56) committing Congress and the President to ''enact legislation in the first session of the 104th Congress to achieve a balanced budget not later than fiscal year 2002 as estimated by the Congressional Budget Office'';

Whereas Congress has approved legislation that achieves a balanced budget in fiscal year 2002 as estimated by the Congressional Budget Office;

Whereas congressional Democrats have offered alternative budgets in the House and Senate which also achieve balance in fiscal year 2002 as estimated by the Congressional Budget Office;

Whereas the commitment to enact legislation in the first session of Congress requires action now in negotiations;

Whereas the negotiations have no preconditions on levels of spending or taxation, except that the resulting budget must achieve balance by fiscal year 2002 as estimated by the Congressional Budget Office;

Whereas the Congressional Budget Office has updated its technical and economic assumptions following a thorough consultation with government and private experts; and

Whereas the Congressional Budget Office has begun consultation and review with the Office of Management and Budget: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the current negotiations between Congress and the President shall be based on the most recent technical and economic assumptions of the Congressional Budget Office, and that the Congress is committed to reaching an agreement this year with the President on legislation that will achieve a balanced budget by fiscal year 2002 as estimated by the Congressional Budget Office.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio [Mr. KASICH] will be recognized for 20 minutes, and the gentleman from Minnesota [Mr. SABO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. KASICH].

Mr. KASICH. Mr. Speaker, I yield 3 minutes to the very distinguished gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, given the situation that we find ourselves in in the country and in the negotiations relative to the budget, this is an important resolution. It is an important resolution because I think it affirms what the intent of this House is and what the intent of the Congress is with regard to our budget. It makes it clear that this Congress is determined to have a balanced budget within 7 years, and it is going to do so based upon the honest numbers generated by the Congressional Budget Office, based upon the most recent technical and economic assumptions. That is the right course of action to take. It is the way in which this country has to move.

Why a resolution? Why do we have to do it through resolution? Well, because throughout this year we have had a situation where the administration has refused, yes, refused, to be serious about balancing the budget. Back in January of this year, the administration publicly opposed an amendment to balance the budget. In February, we found out why. In February, they submitted their budget, and we found out that it maintained deficits of $200 billion a year as far as the eye could see. In April, the administration did nothing. In May, they did nothing, despite the fact that through that period of time Congress was beginning work toward moving toward a real balanced budget.

In June, just before we brought the balanced budget conference report to the floor, the administration submitted their 10-year outline of a balanced budget. The problem was that it was not a real budget. It was a press release. But nevertheless, from that time on they have been trumpeting the fact that they have a balance budget on the table.

The other problem with that balanced budget was the numbers did not add up. They were not good numbers. They were not honest numbers. It was simply a press release.

□ 1630

Then in July and August, the administration once again did nothing. In September, they did nothing. In October, they did nothing. In November, there was no activity until we got to a crisis point with regard to a continuing resolution, whether or not the Government would continue to operate.

Then all of a sudden, the President decided that he would inject himself into the game. What he did was he signed a continuing resolution; in other words, a resolution to keep the Government running, that said that his administration was going to participate in balancing the budget by the year 2002, using honest numbers. However, when we got to the negotiations we found out that the administration really did not mean that. They started talking about 7 years meant 8 or 9 years, that the Congressional Budget Office was sometime later on, it did not really affect the negotiations up front.

Since the time that that continuing resolution committing the President to a balanced budget has been signed into law, the administration has done nothing. Now, we come down to a date when, again, the Government is shut down, the administration is concerned about getting another continuing resolution, and what they are suggesting to us is we ought to just continue this pattern of negotiations.

Mr. Speaker, this resolution says how that negotiation will take place, with real numbers.

Mr. SABO. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, this is not an important resolution. It is one of not great relevance, but I will still vote for it, but it gives us an opportunity to visit a little bit about some objectives and numbers being used.

Let me first say that this discussion of honest and dishonest numbers, or by implication dishonest numbers, is simply not the case. When CBO reestimated outlays for two of the major programs, Medicare and Medicaid, they moved closer to the assumptions of OMB, not further away.

On the other hand, there are legitimate differences on projected revenues over 7 years, and the reality is in the first few years, they are relatively minor and they escalate in importance, because for the first time we are looking at 7 years rather than 5.

The reality is, within the first 3 years of revenue estimates, the estimates between CBO and OMB are virtually identical. So what we have are some disagreements of people of good intent, making relatively minor differences in judgment, but which escalate into significant numbers over a 7-year period of time. And the reality is when we get to the table, as we should have been for the last several weeks, and talk about the substance of the budget, how we structure Medicare, how we structure Medicaid, how we deal with welfare reform, do we give the store away in taxes to the affluent and wealthy in the country, as the Republicans want to do, that we could work these things out.

I personally think in the end when we have a 7-year plan adopted, it should be based on relatively conservative economic judgments. But I also think we need to look at the flow of how dollars flow. I hear my good Republican friends get so excited about these slight variations in economic estimates, which we need to talk about, but I also observe what they do with the budget to make it come in balance. They have a tax cut that explodes in costs after the first 7 years.

The features of the tax plan that favor the wealthy in this country, the actual cost starts out modestly, and then it explodes. But one of the interesting things is, the cost of this tax cut keeps growing through 2001. Then, miraculously, it dips in 2002. And then it escalates very rapidly in 2003.

Is that sound planning for a balanced budget? No, just a gimmick to hide their tax cuts for the most affluent in this country. I have seen lots of estimates of how benefits will flow under programs like Medicaid to our States, and a very interesting pattern happens when I ask my State officials what will happen.

The first 2 or 3 years, relatively little impact. Then it falls off the table. No consistent flow for reforms of Medicaid

in the 50 States in this country, but rather an accommodation maybe to the Governors, who are so enthusiastic about the Republican plan, who will all be reelected or have quit their current term of office before the harshness of their cuts take place; again, not a sensible flow of dollars, but rather designed to accommodate some of their friends in the early years and then the harshness comes later.

So, Mr. Speaker, we have lots of work to do. The only way we are going to solve it is to sit down at the negotiating table as people of good will, trying to find a rational answer, being cautious on our assumptions for the future, because to project 7 years into the future is not easy.

But we also have to make sensible judgments that flow in the long term, that do not all of a sudden call for the drastic cuts in the last year or two, or tax cuts that escalate in cost beyond the 7 years of this budget resolution, or gimmicks in the last year that hide the true cost of the tax cut for the rich in this country.

Mr. Speaker, I will vote ''yes,'' but let us get serious. That is what counts.

Mr. KASICH. Mr. Speaker, I yield 2 minutes to the gentleman from Texas, [Mr. DELAY], and say what counts is the vote.

Mr. DELAY. Mr. Speaker, I appreciate the chairman yielding me this time. I would just say to the distinguished ranking member that all of that can happen if the President would just honor his commitment, and that is the reason for this resolution, is to restate what the President put into law and has yet to honor. So I rise in support of this resolution and urge my colleagues on both sides of the aisle to support it.

The American people are watching us today, and they are not amused. They want the President to stop his political posturing and get down to the business of balancing the budget now. The stock market has already expressed its desire to see us negotiate a balanced budget, and what happens on Wall Street has a very direct impact on what happens on Main Street.

Today, Wall Street expressed its doubts about the administration's sincerity on a balanced budget. The markets have seen the President veto the first balanced budget in 26 years. They saw him veto two sending bills just today and keep the Government closed.

The lesson is very clear: The price of failure is too high. This vote today is simply one more way to reassure the American people that we will not back down. We are resolute on our promise to balance the budget.

Mr. Speaker, the President has waited long enough to start shopping about his ideas. He has flown across the world making peace in different countries. Now it is time for him to make peace with the Congress. Support his resolution and send a message to the President that we are serious about balancing the budget. Support this resolution and show the American people that the Congress can work together in a bipartisan fashion to balance the budget now.

Let us deliver the children of this Nation a Christmas present they can really use, a balanced budget, using honest numbers.

Mr. SABO. Mr. Speaker, I yield 15 seconds to my friend, the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, I thank the gentleman for yielding. CBO numbers, OMB numbers. Listen, as far as the American people are concerned, if Bill Clinton can keep the deficit coming down the way he did each year of his administration thus far, he could use Sesame Street numbers.

Mr. SABO. Mr. Speaker, I yield 5¾ minutes to my friend, the gentleman from Michigan [Mr. BONIOR].

Mr. BONIOR. Mr. Speaker, I thank my colleague for yielding me time.

Mr. Speaker, the American people want us to balance the Federal budget. If possible, they prefer that we do it in 7 years, but that is not the question here today. What the American people do not want us to do is slash Medicare. They have made that abundantly clear. They do not want us to abolish Medicaid, and they do not want us to cut nursing home care.

What they do not want is for us to cut education and to eliminate funds for our environment, but that is exactly what the Republican budget does, and that is why about 75 percent of the American people oppose it.

The American people know that these cuts are not being made to balance the budget or to reduce the deficit; they are being made for one reason and one reason only, to pay for tax breaks, 50 percent of which go the wealthiest people, the wealthiest individuals and corporations in America today.

Now, the Treasury Department did a study. Nearly 50 percent of their tax breaks go to people making over $100,000 a year or more. Under the Republican plan, if you are family earning $350,000 a year, you get a tax cut of about $8,500. If you are family earning $30,000 a year, you get a tax increase of about $381. In fact, under this plan, some big corporations may not have to pay any taxes at all.

Now, to pay for it, their budget makes deep cuts in Medicare, in Medicaid, in education, and in the environment. That is what this debate is all about. We Democrats believe that you can balance the budget in 7 years without making these deep cuts, and we have offered a plan to do just that, because we know that the cuts being proposed in this Republican budget will have a devastating, a devastating, effect on working families.

Do not take my word for it, Mr. Speaker. Listen to what Consumer Union says. These are the people that put out Consumer Reports. You read about them when you want to buy a washing machine. You want to buy an automobile, you get Consumer Reports, buy a TV. These people put out a report. Consumer Union is a highly respected company. Listen to what they have to say in their latest study.

''What Congress isn't telling you is families of nursing home residents may face financial ruin under the Federal Medicaid bill.'' This report says if the Republican budget passes, ''36 million Americans will lose Medicaid protection they have now, and an estimated 395,000 long-term care patients are likely to lose Medicaid payments for their nursing home care next year.''

Mr. Speaker, it costs an average of about $38,000 a year for nursing home care. Where are middle-class families going to get that kind of money to pay for the care for their parents? Most families do not earn that much in a year.

Again, listen to what this report says: ''Under the Republican bill, adult children may be held financially liable for nursing home bills of their parents. Family assets, including homes, may be sold or seized to pay for nursing home bills. No one is guaranteed Medicaid nursing home eligibility as they are now. Families may be forced to spend their life savings on long-term care of a loved one, their whole life savings.'' That is what the Consumers Report says about the Republican budget, what it will do to working families.

The Washington Post today on the front page of the paper had the same article basically. They said, ''Medicaid costs may hit home. GOP plan could make families pay.''

Mr. Speaker, again, that is not Democrats talking, that is the Washington Post. That is Consumer Reports.

Mr. Speaker, we all want to get to a balanced budget, but if we get to a balanced budget by the year 2002 we have to make sure that the budget stays balanced. My friend from Minnesota has eloquently made this point time and time again: Their budget does not do that. Did you ever wonder why they keep talking about 7 years? Let me tell you why, because they do not want you to ask what happens in years 8, 9 and 10. This chart here indicates what happens in years 8, 9 and 10.

Their tax breaks explode, they go through the ceiling. They erupt in years 2003, 2004 and 2005. The red lines indicate here on this graph how they explode. What good is it to be in balance for 1 year? We work this hard to get to balance in the year 2002, and then we give it all away in the next 3 years with these exploding tax cuts.

How are they going to pay for this if they are going to give these tax cuts? If they are going to give the tax cuts, how are they going to pay to get their budget in balance? Are they going to cut more Medicare, are they going to cut more Medicaid, are they going to cut education?

Mr. Speaker, the American people have rejected this Republican budget, and the American people see through

this resolution. We can all vote for this resolution today, but it is really not worth the paper it is written on. It will not get the Government open, and it will not put people back to work. It will not get us back to the negotiating table, and it will not get us a balanced budget. We should be at the table right now talking about how we are going to save Medicare, Medicaid, and education, instead of passing meaningless resolutions that get us nowhere.

The American people want the Government to get back to work. They wanted negotiators to get back to work. They sent us here to take care of their priorities, Mr. Speaker, and that is why we should be doing that exact thing, taking care of their priorities, and their priorities are in education for the children, environment for the future, and saving Medicare and Medicaid.

□ 1645

Mr. KASICH. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from the State of North Carolina [Mrs. MYRICK].

Mrs. MYRICK. Mr. Speaker, This resolution simply reaffirms the commitment that was made in November by Congress and the administration that we would achieve a balanced budget not later than the year 2002, as estimated by the Congressional Budget Office. Those estimates are simply more conservative.

This resolution does not commit anyone to any one set of proposals or policy. Very simply, we have always stressed that everything is on the table, and that is still the same today. The only thing that is not is that we will achieve balance in 7 years, by 2002, using real numbers.

President Clinton, in February of 1993, in his State of the Union Address said, and I quote, ''I will point out that the CBO was normally more conservative in what was going to happen and closer to right than previous Presidents have been. Let us at least argue about the same set of numbers so the American people will think we are shooting straight with them.''

We have a moral reason to balance this budget by the year 2002. It is going to lower interest rates by at least a couple of percentage points, and that makes a big difference to young couples like my son and his wife who are just buying a new home. That is going to save them thousands and thousands of dollars on their mortgage.

Also, our new granddaughter, who was just born last week, is not going to have to pay $187,000 in interest just on the interest of the debt over her lifetime. It will make a big difference for all the young people in our country. So I urge everyone today to please support this resolution.

Mr. SABO. Mr. Speaker, I yield 30 seconds to the gentleman from Utah [Mr. ORTON] my good friend.

MODIFICATION TO HOUSE CONCURRENT RESOLUTION 135 OFFERED BY MR. ORTON

Mr. ORTON. Mr. Speaker, the resolution before us could be improved if we added one paragraph at the end that stated: Further resolved that negotiations should resume immediately and continue until agreement is reached, and that during negotiations the operation of the Federal Government shall continue under continuing resolution.

I ask unanimous consent that that language be added to the resolution before us.

Mr. WALKER. Mr. Speaker, reserving the right to object. First of all, is it appropriate under the——

The SPEAKER pro tempore (Mr. HAYWORTH). The gentleman will suspend. First, the Chair must inquire, does the gentleman from Ohio yield for the purpose of the gentleman from Pennsylvania's objection?

Mr. WALKER. Mr. Speaker, I am reserving the right to object to his unanimous-consent request.

The SPEAKER pro tempore. The Chair cannot entertain the request unless the gentleman from Ohio yields for the purpose.

Mr. WALKER Mr. Speaker, I object.

Mr. ORTON. Mr. Speaker, I believe we should try to keep the Government open as we do this, and I think this would do it.

So I would urge my colleague, my friend, the chairman of the committee, to consider such language so that we can constructively get the negotiations back on track and, in fact, continue until we all reach the resolution that we want.

Mr. SABO. Mr. Speaker, I yield 3½ minutes to the gentleman from Michigan [Mr. DINGELL], my good friend.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, the objection just raised to the unanimous-consent request from the gentleman from Utah says everything. This document is nothing more or less than a political document. It says something that everybody can vote for, but it accomplishes absolutely nothing about what it is we are here to do.

Basically, it simply says we think we ought to balance the budget in 7 years. But it says absolutely nothing, nothing whatsoever about getting the government back to work. We have nine cabinet departments and the EPA which are now shut because the Republican Members walked out of the discussions with the President and the Democrats. That is why the Government is shut down. This will cost about $160 million to $600 million a day. We do not know exactly what the precise numbers are but that is what it is.

The hard fact is the Republicans have said this, speaking through their principal spokesman, the gentleman from Georgia [Mr. GINGRICH]. We will cooperate with the President to reach an agreement but we will not compromise.

How does one cooperate without compromising? The answer is it cannot be done. And the answer is this resolution does not do anything to resolve the problem of a country which is incapable of having its government function on its behalf because of the behavior of the Republican Members of this body who have, first of all, walked out of the compromise; second of all, objected to a meaningful improvement in what it is that this House would do with regard to the resolution before us; and, last of all, they are going to keep the Government shut down.

I do not know how long it is that they are going to do it but, again, Mr. GINGRICH has some interesting things to say. He says, I do not care what the price is. I do not care if we have no executive offices and no bonds for 30 days. Not this time.

Well, the Republicans want to shut this place down. They want to shut the Government down. They want to eliminate Government services and they want to pass a tawdry resolution like this which accomplishes nothing.

I would urge that the Members consider perhaps the changes made by the gentleman or that we consider the fact that this legislation is significantly lacking in that it does not say we are going to try to see to it that Medicare is protected, that Medicaid is protected, that education is protected, that the poor and the unfortunate are not going to be cast into deep and dark hardship just before Christmas.

I would observe to my colleagues that just before the holidays is a time my Republican colleagues usually choose to shut down the Government. Why they are so stricken with the holiday spirit and why they seek to do so at such time is beyond my ken, but I would again observe to my colleagues that the burden for governing this country and the burden for seeing to it that the Government runs is on the Republicans Members who have shut the Government down, who are denying the people the access to their Government agencies and denying them the working of programs which we all recognize are needed for the good of the country.

Mr. Speaker, I would urge my colleagues to recognize the fault is over there. The fault is on those who are shutting this Government down and presenting us, instead, with this nonsensical piece of whimsy which accomplishes nothing in the public interest and does nothing to get the country going again.

Mr. KASICH. Mr. Speaker, I yield 2 minutes to the gentleman from Connecticut [Mr. SHAYS], a very distinguished member of the Committee on the Budget.

Mr. SHAYS. Mr. Speaker, we all want to balance the budget in 7 years or less? That is not true. We all want to balance the budget? That is not true. If we all wanted to balance the budget, it would have been balanced years ago. We have been having deficits for 30 years because everybody says they want to balance the budget, they just do not vote to balance the budget.

For the last year we have put forward a plan. We have put forward a plan the other side may not agree with, but we

have put forward a plan. And now we are waiting for theirs. Until we get their plan, it is hard to negotiate. Because we have one plan on the table, which they do not like, so they need to show us their plan.

The plan they do not like increases earned income tax-credit spending from $19 to $25 billion over 7 years. That is an increase any way we look at it, but they call it a cut. Here in Washington maybe it is a cut, but out where I live, when we go from $19 billion to $25 billion, it is an increase.

The school lunch program goes from $5 to $6.8 billion—over 7 years. Not a cut, but in this place people call it that. The student loan goes from $24 to $36 billion. It is a 50-percent increase, but the way they seem to call cuts, I guess it is a cut when it goes up 50 percent. Medicaid goes from $89 to $127; Medicare from $178 to $289 billion.

No; I am not married to balancing the budget in 7 years. I would like to do it in less. If the Democrats did not want a tax increase, that is fine. But then why did they all vote for a tax cut? If they did not want a tax cut, why did they vote for the tax cut? Why did they vote for the penalty tax elimination for seniors, if they did not want to cut taxes? They vote one way and then say something else. It gets a little tiring.

The bottom line is we have put forward a plan. We intend to move forward, however long it takes. We will do it with the President's help or we will do it without the President's help, but we have done our job. Now it is up to the Democrats to do their job.

Mr. KASICH. Mr. Speaker, I yield 1 minute to the distinguished gentleman from the State of Arkansas [Mr. HUTCHINSON].

Mr. HUTCHINSON. Mr. Speaker, I have never been as disappointed in the President, my President, as I was this past Friday when it became clear he had reneged on his pledge to a 7-year balanced budget.

Mr. Speaker, a deal is a deal, a commitment is a commitment, and a law is a law. The last 30 days have been spent reinterpreting the language of the agreement that the President made to Congress and to the American people.

This resolution's sole intent is to confirm once again Congress' commitment to balancing the budget by the year 2002 using real numbers, numbers that both the Congress and the administration have agreed to use.

I join my colleague, the gentleman from Connecticut [Mr. SHAYS], in asking where is the President's plan? This is not a game of dare. In fact, it is not a game at all. It is a fundamental debate over whether this Congress will ever again have the discipline to balance its books. And what is at stake is enormously important, and that is the economic future of America. It is the future for our children and our grandchildren. Support this resolution.

Mr. KASICH. Mr. Speaker, I yield 1 minute to the very distinguished gentleman from the State of Arizona [Mr. KOLBE].

Mr. KOLBE. Mr. Speaker, I thank the Chairman for yielding me time.

I rise in strong support for this resolution. It reaffirms what we said before that we wanted, and that is to have a balanced budget in 7 years, by the year 2002.

My colleagues might say, why do we need to do that? We voted on that a long time ago. We voted on that more than a month ago. But ever since we voted for that, the administration and the people down at the White House have been trying to move the goal post. They have been saying, well, we can come close to it or we want to use a little different figures.

This President signed a law. He signed a law saying he would negotiate. He would negotiate to balance the budget in 7 years. And that is all we are saying that we want to do here tonight. Everything else is on the table. We have said that continuously. All the other issues are on the table. The only thing not on the table is that we are going to balance the budget by the year 2002, 7 years, and we are going to do it using real numbers. No gimmicks, no games. We are going to do it using real numbers scored by the Congressional Budget Office.

Let us get on with it so that we can get people back to work, we can get the American people a balanced budget, which is what they want, by the end of this year.

Mr. KASICH. Mr. Speaker, where do we stand on time here?

The SPEAKER pro tempore. The gentleman from Ohio [Mr. KASICH] has 9¼ minutes remaining and the gentleman from Minnesota [Mr. SABO] has 5½ minutes remaining.

Mr. ABERCROMBIE. Mr. Speaker, I ask unanimous consent to extend debate 5 minutes on both sides.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Hawaii?

Mr. KASICH. Reserving the right to object, Mr. Speaker, may I ask the gentleman why he would like to do that?

Mr. ABERCROMBIE. Mr. Speaker, I know that there are a number of speakers, due to the nature of the business on the floor, who would like to have perhaps a minute to contribute to the debate.

Mr. KASICH. Is the gentleman going to be very charitable to us?

Mr. ABERCROMBIE. I am the essence, the heart, the soul of charitable endeavors.

Mr. KASICH. Then, Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Hawaii?

There was no objection.

Mr. KASICH. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Speaker, nearly 1 month ago, the President and leaders of Congress signed a pledge to a 7-year balanced budget using honest numbers. Today, one week until Christmas, President Clinton has shut down the Government and broken his word to America's families, workers, and children.

We pledged a 7-year balanced budget for our children. We committed to preserve Medicare for our parents. And we vowed to reduce taxes for our families.

We kept our promise to present a balanced budget. We provided a 7-year balanced budget because it will benefit all Americans. Our balanced budget will reduce interest rates. More Americans will be able to afford new homes, cars, and college education. And as interest rates fall, job creation will rise. A balanced budget will mean an estimated 6.1 million new jobs over 10 years.

We kept our word to preserve Medicare and prevented it from going bankrupt. The Balanced Budget Act protects Medicare's solvency for a generation. And we kept our commitment to make Government spend less so that families can keep more of what they earn.

The same President who presented no plan to balance the budget during the 2 years when his party controlled both the White House and Congress vetoed the first balanced budget in 26 years. The same President who signed a pledge to offer a real balanced budget of his own has presented no balanced budget plan.

We must keep our word to balance the budget. Not just because we keep our promises. Balance the budget for our children, for our parents, for our country.

□ 1700

Mr. SABO. Mr. Speaker, how much time is remaining on each side?

The SPEAKER pro tempore (Mr. HAYWORTH). The gentleman from Minnesota [Mr. SABO] has 10½ minutes remaining, and the gentleman from Ohio [Mr. KASICH] has 13¼ minutes remaining.

Mr. KASICH. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. SMITH].

Mr. SMITH of Michigan. Mr. Speaker, I see one reason why this resolution is so important is because so many people say that they would like a balanced budget, but do not mean it. Mr. Speaker, I would say to the gentleman from Hawaii [Mr. ABERCROMBIE], is it not interesting that when we talk about a balanced budget, we are talking about all revenues coming into the Federal Government covering all of the expenses that are going out. But still, this is such a modest proposal, and we cannot even get a modest proposal through.

Mr. Speaker, if we fail to do this little bit toward getting this balanced budget now, it could be a generation before anybody is brave enough to try again.

Mr. Speaker, in this proposal of a balanced budget, even after 7 years in the year 2002, we are still borrowing

$100 billion from Social Security and the other trust funds. How deep in debt should this country go? We are spending the money that our kids and our grandkids have not even earned yet.

Let us be brave. My colleagues cannot say they want a balanced budget and then pretend to have rosy scenario scoring from somebody else, just so that they do not have to cut spending.

If we are going to achieve this goal of having fiscal responsibility and stability, and if we are going to bring interest rates down, then we have got to do it. I know it is hard. Politicians are used to doing more and more things for people, even if they have to borrow money, because when we talk about the budget, people's eyes sort of glaze over and they do not understand it.

Mr. Speaker, the fact is that if interest rates will go down, because we balance the budget, we are going to see this economy take off like it has never taken off before. Let us just do it. The American people want it. Everybody says they want it now. That is good news. Vote for this resolution that says use CBO scoring. Have a balanced budget.

Mr. SABO. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. CONDIT].

Mr. CONDIT. Mr. Speaker, I rise in support of the resolution as a cosponsor of the resolution. I think that we have to recognize that numbers do matter in this debate, and it is important for us to be on the same page when we start evaluating the budget and start talking about numbers.

Mr. Speaker, I frankly think we ought to put this issue behind us and agree to the CBO numbers, agree to the 7 years, so that we can get to the debate of Medicare, Medicaid, student loans, and the other important programs in the budget.

I think it would be the best thing we could do today for us to put this number debate to rest in the House and in the Senate, so that we could get to the important parts of this budget, and that is the public policy part of it.

So, Mr. Speaker, I encourage all of the Members, let us get this over with. Vote in favor of the resolution so that we can get to the serious part of this debate.

Mr. KASICH. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Oklahoma [Mr. LARGENT].

Mr. LARGENT. Mr. Speaker, I also rise in favor of the concurrent resolution that says that we will balance the budget in 7 years, that we will use honest numbers, as the President asked of us earlier this year, the Congressional Budget Office numbers.

Mr. Speaker, I want to say in particular to my colleagues that like an NBA basketball game, we are entering the final 2 minutes where all the action takes place. There are many here who work on the Hill that are interested in being with their families, none more than myself. But I want to remind all of us that from Valley Forge to Vietnam, great men and women have made serious sacrifices for our country to ensure the freedom and the future of this country for our children and for the very country itself.

Mr. Speaker, now is the time for us to make what is a relatively small sacrifice; to be willing to stay here and get the job done, to balance the budget in 7 years as we have been dedicated to doing since we stepped foot on the Hill on January 4, 1995.

Mr. Speaker, I would urge all of my colleagues to vote in favor of the concurrent resolution.

Mr. SABO. Mr. Speaker, I yield 1 minute to my friend, the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. Mr. Speaker, I will support this resolution as well. I believe that numbers do matter, but I also believe that priorities matter.

Mr. Speaker, we passed a continuing resolution 25 days ago. We said in that continuing resolution we would use 7 years and CBO numbers, and that we would protect future generations, ensure Medicare solvency, reform welfare, provide adequate funding for Medicaid, education, agriculture, national defense, veterans, and the environment. Mr. Speaker, we should have that language in this resolution.

Also, the Speaker and the gentleman from Texas [Mr. DELAY] just quoted some efforts in a press conference by the gentleman from Michigan [Mr. UPTON] and myself, circulating a bipartisan letter that could be helpful in this. I say in my letter, Mr. Speaker, and reminding the Speaker of the House, that our letter reflected what is also not in this resolution: That the Government should remain open under a CR and that everything should be on the table, including tax cuts.

Mr. SABO. Mr. Speaker, if the gentleman from Ohio [Mr. KASICH] is recruiting speakers, I will yield 1 minute to the gentleman from Hawaii [Mr. ABERCROMBIE], that kind and gentle soul. He may generate some speakers for the other side.

Mr. KASICH. Mr. Speaker, I take the gentleman at his word, but I happen to know he does not have Christmas in his heart.

Mr. SABO. Mr. Speaker, the gentleman from Hawaii always has Christmas in his heart.

Mr. KASICH. Mr. Speaker, I yield 1 minute to the gentleman from Hawaii [Mr. ABERCROMBIE] as a Christmas present to my dear friend.

PARLIAMENTARY INQUIRY

Mr. ABERCROMBIE. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. ABERCROMBIE. Mr. Speaker, am I to take it from the just-concluded remarks that I am now to deliver a short lecture on the Christmas spirit?

The SPEAKER pro tempore. The gentleman has 1 minute to make his remarks, and that of course was not a parliamentary inquiry.

Mr. ABERCROMBIE. Mr. Speaker, I certainly hope that I will be able to maintain the spirit of the discussion here on the floor. After all, Christmas is a magical time. Christmas is a time of fantasy, and inasmuch as this resolution is a fantasy and it will take magic to actually balance the budget, as opposed to the hard work that is necessary, I suppose one could be for it.

Mr. Speaker, I regret that I have to be against it, because my reading of the Congressional Budget Office numbers are that using the honest numbers that are attributed to it is that the budget cannot be balanced by the year 2002 under the present methodology.

We might be able to accomplish it over the long term by some other method, but simply to pass this resolution to perpetuate the mythology of a balanced budget, I think, is not in our interest.

I have a letter, for example, dated December 14 from the Congressional Budget Office that the deficit in the general fund for this year will be $270 billion. So, I wish you 270 billion dollars' worth of a Merry Christmas at this time, Mr. Speaker.

Mr. SABO. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Speaker, I have to say that I have a hard time laughing at what is going on, because there are two things lacking in this resolution. Two weeks ago, we passed a concurrent resolution that essentially kept the Government going and indicated that we would have a 7-year balanced budget based on CBO estimates, and also said that we would protect and preserve Medicare, Medicaid, the environment, and education.

Mr. Speaker, we only have the 7-year balanced budget in this resolution. We do not have the continuing resolution because the Government is shut down and we do not have the prioritization to protect Medicare, Medicaid, education, and the environment.

I will support this resolution because I do support the 7-year balanced budget, but I do think it is wrong not to include the continuing resolution to keep the Government open. It is certainly wrong for the Republicans to not come forward with a plan that protects Medicare and Medicaid, puts money back into those programs, and eliminates the tax breaks for the wealthy in order to finance adequate funding for Medicaid and Medicare.

Mr. KASICH. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. FRANKS].

Mr. FRANKS of New Jersey. Mr. Speaker, a moment ago my good friend, the gentleman from Hawaii underscored the experience and the warmth of the Christmas holiday season. Regardless of our religious affiliation, every single American, every single family looks forward to this time of the year to renew their relationships with friends and family to celebrate together.

But I believe, Mr. Speaker, what we have seen is that some traditions are

very, very difficult to break, and that is what we are confronting tonight. As exalted and as precious as the Christmas tradition is for our country, we notice there are some traditions which yield only very painfully to change. The 26-year tradition of this institution calling on our children and grandchildren to pay the debts of this Government is a tradition that simply must end.

Mr. Speaker, nothing would be truly more in the Christmas spirit than allowing the next generation to escape from the liabilities of people who cannot keep their bank book.

Mr. SABO. Mr. Speaker, I yield 1 minute to the gentlewoman from California [Ms. WATERS].

Ms. WATERS. Mr. Speaker, the American public is tired of all of us precisely because of what is going on, on the floor right now. This resolution is meaningless.

Basically, the 7 years have been agreed upon and the CBO numbers are agreed upon in general. Both sides of the aisle have some smoke and mirrors in some places as we talk about CBO numbers. That needs to be cleared up. Instead of this meaningless resolution, where basically people have agreed, we need to be talking about a continuing resolution.

The Republicans will not agree to a continuing resolution to keep the Government going, to keep it operating, because essentially they are trying to do their negotiation through the resolution. They need to stop this crap and get on with the business of negotiating.

Mr. SABO. Mr. Speaker, I yield 1 minute to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Speaker, I thank the ranking member of the Committee on the Budget. Mr. Speaker, we have now spent almost an hour debating what is essentially a joint resolution, a statement of politics. We have essentially agreed on the policy. We all know that.

Yes, there are some differences; yes, there are allegations on both sides. But the fact of the matter is that seven appropriation bills have not been passed and signed by the President, and a third of the Government, or more, is shut down.

We could have spent this hour putting the Government back to work; not saying that we would not address the balanced budget, because my colleagues on the other side have the votes not to adjourn until we do so.

But why we have to, time after time, use as a bludgeon on this institution and the country the shutting off of services to the American public is frankly beyond me.

□ 1715

We can do it even tonight if the leadership on my colleague's side decides to do so. Pass a continuing resolution based upon the last one, which was your choice of numbers, and send it to the President, and he will sign it, and we will open the Government tomorrow and serve the American public.

Mr. SABO. Mr. Speaker, I yield the balance of my time to the gentleman from Missouri [Mr. GEPHARDT], distinguished minority leader and my friend.

(Mr. GEPHARDT asked and was given permission to revise and extend his remarks.)

Mr. GEPHARDT. Mr. Speaker, in my view this resolution is a colossal waste of time. I believe that a few weeks ago we voted on language that was essentially the same. This is repetitive. We voted on language that said the President and the Congress shall enact legislation the first session of the 104th Congress to achieve a balanced budget not later than fiscal year 2002, as estimated by the Congressional Budget Office, and the President and the Congress agree that the balanced budget must protect future generations, ensure Medicare solvency, reform welfare, provide adequate funding for Medicaid, education, agriculture, national defense, veterans, and the environment. Further, the balanced budget shall adopt tax policies to help working families and to stimulate future economic growth.

Now after this was enacted, our friends on the majority side say the condition for even sitting down to talk, which is what we have to do to try to reach a budget agreement, is that the President has to put down a budget that meets CBO revised in 7 years. Why is there not an equal precondition on our part to sit down, that we have a recognition of the priorities that are important to the Democratic Party, Medicare, Medicaid, environment, education, and so on?

At this rate we are never going to do other than waste time on the floor with resolutions like this. We are not going to ever sit down at a table as rational adults and begin to talk about our differences, which are fundamental. The gentleman from Ohio has said we are not making these things up. These are fundamental differences. But the only way we are going to get through it is if we can finally sit down at a table and have that conversation. We are not even going to be able to sit down unless we get rid of preconditions, your preconditions or our preconditions.

Finally, let me say that all of this worry about CBO and OMB and all the talk on this side, and I admire the work that has been done to try and balance the budget; it is hard to do. But I will just remind Members that in 1990 we had a budget summit and with the best of intentions and the best of faith on both sides, we believed, and I looked at the documents the other day, that the deficit in 1995 would be $29 billion, as measured by CBO.

We had another budget in 1993 that I know we all remember that the President brought and that all Democrats voted for that supposedly cut the deficit in half and did. So after two budgets, the first of which said that the deficit would be $29 billion in 1995, by CBO, we did not make it.

Why did we not make it? It was not because of bad faith. It was not because we did not negotiate. It was not because anybody meant for there to be a deficit of over $300 billion this year or $165 billion after the 1993 budget deal. But because there is no way to prognosticate what the deficit is going to be 7 years from now, even 5 years from now. It is humanly impossible.

So let us gather some humility about what we are doing. Let us gather some good faith about what each of us is trying to do. Let us sit down and go back to the resolution we passed 2 weeks ago, and let us look at both sides of the equation. We are not here just talking about how to balance the budget by CBO in 7 years. We got to talk about Medicare and Medicaid and education and the environment and whether or not we should be trying to do this with a tax break for the wealthiest Americans paid for by cuts on the poorest Americans and middle-class Americans. That is what we have to talk about.

It is going to be hard to get it done. So let us stop wasting time with resolutions like this. Let us get to the table, and let us get the job done for the American people.

Mr. KASICH. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, let me just suggest where we are. We are voting on a resolution that reconfirms the agreement we made 27 days ago that we would have a little contract, a little contract. The gentleman from Pennsylvania understands little contract out there in Pennsylvania, he knows we make a contract. It is like going to buy a Christmas tree. You say, I will give you $12 for that tree and you deliver it to my house. The guy says, ''yes''. So you give him the $12, and then he delivers the tree.

Now, if you give him the $12 and the tree does not show up, then he is crossing the gentleman from Pennsylvania [Mr. MURTHA]; that would be a bad thing to do. Second, the gentleman from Pennsylvania [Mr. MURTHA] would never go do that, would never go and buy a tree there again because you understand the contract. We have got a point we live by; they got a point they live by.

Now, we made a contract 27 days ago. The contract was simple. We said, we will lay down a plan to balance the budget using real numbers, not cooking the books, real numbers, like a family. Whether they sit down and add up the checkbook at the end of the day after they add up the checkbook, it comes out right, using real math, not cooking the books.

We said we are going to do that, and we are going to try to recognize some priorities. I want to tell my colleagues about one of them. I want to tell my colleagues about Medicaid because this is the best part of Republican compassion.

Let me say what this is all about. The Governors of our country, the majority of them, 31 of them, they represent 70 percent plus of the American people. They say, we can figure out a way to serve the disabled, the poor, the children, the elderly. And we can do it better if you just let us have a chance to design the program the way we wanted to design it so that we can show true compassion in our States that the old one-size-fits-all philosophy is rejected. I mean, I have a shoe, it is size 6, and every foot has to fit in it. That is the way Medicaid works now.

What our Governors are saying, and, frankly, increasing numbers of Democratic Governors as well, are saying, ''Hey, Congress, stay out of this. Let us design a system that will take care and provide quality services to the poor and the disabled and the senior citizens. Do it more effectively, more compassionately.''

We met that provision in this contract. But the bottom line on the contract is a 7-year balanced budget using real numbers. The President agreed to do that 27 days ago. And we do not have it.

The Republicans have not left the table. We told the White House, you come with a real offer to get inside the box so we can have some negotiations and then we will be back. And it is not up to the Republicans. We had an amendment here that we should reopen the Government. It is the President that does not want to open the Government. It is on the President's shoulders about whether the Government opens or not because all the President has to do is live up to the contract. That is all he has to do. Put a plan down, meeting his priorities.

He can spend all the money on welfare. He can zero out the Department of Defense. He can give Hazel O'Leary three or four jets. We do not care. Just make sure the numbers add up.

Now, if we were not living up to our side of the contract, I would be embarrassed because I could not go out and I could not tell people that we were trying to keep our end of it.

The gentleman from Texas, Mr. PETE GEREN, has his daughter here. Young lady, when your daddy makes a contract with you and he says, if you do this, if you make good grades in school, I am going to give you an allowance. If your daddy made that deal with you and you made good grades and he did not give you an allowance, you would be upset with him, would you not? You would be. You are right, you would be.

Let me just suggest, let me just suggest one thing, now that his daughter is here. The gentleman from Texas is a great Congressman. He is leaving. We ought to show him how much we appreciate his service in this body, with his daughter sitting right here.

Let me just suggest one or two other things. Our plan to balance the budget does not have exploding tax cuts or anything else. My colleagues in this body, our spending goes from a combined $9.5 trillion in spending over the last 7 years to a $12 trillion increase. Medicare, Medicaid, they all go up, and they all go up significantly. We show true compassion in balancing the budget and letting people have some of their own money back.

Let me tell my colleagues what this is all about. This is a message to the President. This was scripted to keep the rhetoric out. This was consulted on by Democrats in this body. Why did I insist upon It? I insisted upon it because this is not a jab in the eye of the President of the United States, but it is a message. It is a message to the President of the United States that the decent, hard-working, bipartisan membership of this body thinks that we ought to put this little girl's future first. We should balance the budget in 7 years. We should use real numbers. We can fight about our priorities.

Mr. President, this is not jabbing you in the eye. It is just saying to you, Mr. President, keep your side of the contract; and, if you will do that, we will move forward.

So what I would suggest is, for everybody, including the Democrats who totally disagree with our priorities, please come to the floor and send the message to the President to keep his side of the contract. Let us sit down and negotiate with the same set of numbers, the same set of books, with only one thing in mind: the future and the economic survival of the United States of America.

Let us pass the resolution.

The SPEAKER pro tempore (Mr. HAYWORTH). The question is on the motion offered by the gentleman from Ohio [Mr. KASICH], that the House suspend the rules and pass the joint resolution, House Joint Resolution 132.

The question was taken.

Mr. SHAYS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic devise, and there were—yeas 351, nays 40, not voting 43, as follows:

[Roll No. 866]

YEAS—351

Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Beilenson
Bentsen
Bereuter
Bevill
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonior
Bono
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Calvert
Camp
Campbell
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clayton
Clement
Clinger
Coble
Coleman
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeFazio
DeLauro
DeLay
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Ehlers
Ehrlich
Emerson
English
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Flake
Flanagan
Foley
Forbes
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Gonzalez
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Jones
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Manton
Manzullo
Markey
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Menendez
Metcalf
Meyers
Mica
Miller (CA)
Miller (FL)
Minge
Moakley
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Quinn
Radanovich
Ramstad
Reed
Regula
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Rose
Roth
Roukema
Royce
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schumer
Scott
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stark
Stearns
Stenholm
Stokes
Studds
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Zeliff
Zimmer

NAYS—40

Abercrombie
Becerra
Borski
Clay
Clyburn
Collins (IL)
Collins (MI)
Conyers
Coyne
Dellums
Engel
Filner
Foglietta
Frank (MA)
Gutierrez
Hastings (FL)
Hinchey
Jackson (IL)
Jacobs
Kanjorski
Kennedy (RI)

Martinez	Payne (NJ)	Velazquez
McDermott	Rahall	Waters
Meek	Roybal-Allard	Watt (NC)
Mink	Rush	Waxman
Mollohan	Serrano	Williams
Nadler	Thompson	
Pastor	Torres	

NOT VOTING—43

Baker (LA)	Fowler	Owens
Berman	Frost	Pryce
Bilbray	Gibbons	Quillen
Bonilla	Goodlatte	Rangel
Brewster	Harman	Ros-Lehtinen
Browder	Hilliard	Schroeder
Callahan	Hunter	Stockman
Chapman	Lantos	Tejeda
Coburn	Laughlin	Towns
Cramer	Maloney	Vento
de la Garza	McDade	Yates
Dickey	McKinney	Young (AK)
Edwards	Meehan	Young (FL)
Ensign	Mfume	
Ford	Molinari	

(1751)

The Clerk announced the following pair:

On this vote:

Mrs. Fowler and Mr. Edwards for, with Mr. Yates against.

Mr. GUTIERREZ and Mr. PASTOR changed their vote from ''nay'' to ''yea.''

Messrs. FATTAH, WISE, WARD, and REED changed their vote from ''nay'' to ''yea.''

So (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HOBSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERSONAL EXPLANATION

Mr. GOODLATTE. Mr. Speaker, on rollcall No. 866, I was unavoidably detained. Had I been present, I would have voted "yea".

CONFERENCE REPORT ON H.R. 2539, ICC TERMINATION ACT OF 1995

Mr. SHUSTER submitted the following conference report and statement on 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:

CONFERENCE REPORT (H. REPT. 104–422)

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

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

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

''CHAPTER	*Sec.*
''131. GENERAL PROVISIONS	*13101*
''133. ADMINISTRATIVE PROVISIONS	*13301*
''135. JURISDICTION	*13501*
''137. RATES AND THROUGH ROUTES	*13701*
''139. REGISTRATION	*13901*
''141. OPERATIONS OF CARRIERS	*14101*
''143. FINANCE	*14301*

''CHAPTER Sec.
''145. FEDERAL-STATE RELATIONS .. 14501
''147. ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES 14701
''149. CIVIL AND CRIMINAL PENALTIES 14901

''PART C—PIPELINE CARRIERS

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

''PART A—RAIL

"CHAPTER 101—GENERAL PROVISIONS

''Sec.
''10101. Rail transportation policy.
''10102. Definitions.

"§ 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

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''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 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 headquarter'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 carriers 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 purchase, 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 Government 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.
''11323. Consolidation, merger, and acquisition of control.
''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, corporation, 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 trackage 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 written 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 immediately 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 jurisdiction 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 noncontiguous 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 vegetables, 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 antitrust 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 rulemaking 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 policies 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 financial 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.

''(i) 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 authority 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 noncontiguous 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 transportation 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 applicable 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 under-charge 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 subchapter 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 corresponding 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 of 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 of 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 favorable 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 subpenas.
''16105. General criminal penalty when specific penalty not provided.
''16106. Punishment of corporation for violations committed by certain individuals.

''§ 16101. General civil penalties

''(a) 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 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 subpenas

''Whoever does not obey a subpena 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 regulations. 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 become 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 Council 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 Chairman 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)''; and

(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 acquired, 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 persons 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, Untied 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. INOUYE,
J.J. EXON,
JAY ROCKEFELLER,
JOHN BREAUX,
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 in 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 pre-empted 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 ensuring 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 by 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 one 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 expenditiously 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 one 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 competition) 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 remain 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 outsides 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, 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 interchanges facilities to connecting water carriers is limited to such carriers as the 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 owned 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 carrier 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 jurisdictional 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 railroads 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. Abandonment 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 to 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 competitive 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 National 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 CARRIER.

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 provisions.

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 actions 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 tacks 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-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 Carmark 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 introductory 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 antitrust 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 requirements 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 households 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 requirements 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. Carries 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 methods 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 antitrust 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 antitrust 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 but 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 but carriers involving their operations.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provisions.

LIABIALITY 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 provisions.

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 provisions.

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 provisions.

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 provisions.

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)93)–(5), enacted in the Transportation Regulatory Reform Act of 1994 (TIRRA).

Conference substitute

The Conference adopts the House provisions 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

under5charge 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 provisions.

GOVERNMENT TRAFFIC

House bill

Sec. 1712. 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 provisions.

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 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 authorizing intrastate service to be provided in conjunction with interstate bus operations (in subsections (b)(3)–(6)). It retains the existing preemption for intercity bus operations 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. 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.

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 have 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 States should require insurance filing 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 system 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 cost 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 legislation change 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 reports 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 section, 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 in 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 requiremetns for household goods carriers and encourages States to review their entry requiremetns 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 and 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:	[1]8.421
1997	12.0
1998	12.0

[1] This equals the FY 1996 DOT appropriations 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 year 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 entities 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 governing 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 expects 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-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 Federal 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 Science's 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 one 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		13101	15101	National Transp. Policy.
0101a	101101			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 Auth'y.
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.

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
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.
10504	10501(c)			Exempt rail mass transp.
10505	10502	13541	15302	Exemption Auth'y.
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		13507		Mixed regulated & unregulated.
10529		13508		Cooperative Ass'ns.
10530		13902(c)		Foreign Carrier registrations.
10531				Mass Transp. Exemption.
10541		13521		Water General Jurisdiction.
10542				Water—Exempt bulk transp.
10543				Water—Exempt incidental transp.
10544				Water—Misc. Exemptions.
10561		13531		Frt. Forwarder—General Jurisd'n.
10701	10701(a), (b)	13701(a)	15501	Rate Reas. Reqts.
10701(f)		13709		Undercharge settlements.
10701a	10701(c), (d)			Rail Rate Reas. Reqts.
10702	10702		15502	Carrier Auth'y to set rates.
10703	10703	13705		Carrier Auth'y for Through Routes.
10704	10704	13701(b)	15503	ICC Auth'y to prescribe rates.
10705	10705	13701(b)		ICC Auth'y to set through routes.
10705a				Joint rate surcharges.
10706	10706	13703		Collective activities & antitrust exemption.
10707				Suspension of new rail rates.
10707a				Zone of rate flexibility.
10707a(a)(2)(B)	10708	-----	-----	Rail cost adjustment factor.
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.
10727	-----	-----	-----	[previously repealed].
10728	-----	-----	-----	Separate rates for distinct services.
10729	-----	-----	-----	[previously repealed].
10730	11706(c)(3)	-----	-----	Released rates.
10731	-----	-----	-----	Recyclables rates.
10732	-----	13713	-----	Food and grocery transp.
10733	-----	-----	-----	Recyclable rates.
10734	10722	-----	-----	Car utilization.
10735	-----	13704	-----	HHG—binding estimates.
10741	10741	-----	15505	Anti-discrimination.
10742	10742		15506	Facilities for interchange.
10743		13707		Payment of rates.
10744	10743	13706		Liability for payment of rates.
10745	10744			Continuous carriage of freight.
10746				Commodities clause.
10747	10745			Facilities provided by shipper.
10748				Transp. of livestock.
10749				HHG frt. forwarders—exch. of services.
10750	10746			Demurrage.
10751				Business entertainment expenses.
10761		13702(a)		Tariff required.
10762		13702 (b)–(d)		Tariff requirements.
10762(a) (3)–(5)		13710 (a)		Undercharge applicability.
10763	10747			Shipper routing.
10764				Arrangements between carriers.
10765				Water arrangements with other carriers.
10766				Frt. Forwarder traffic agreements.
10767		13708		Billing and collecting practices.
10781–10786				Rail property valuation.
New		13711		Undercharge—Unreas. practice from NRA (now a stat. note to 10701).
10901	10901, 10902			Construction and operation.
10902				Safe and adequate facilities.
10903	10903			Abandonment approval/disapproval.
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	10907			Feeder line development.
10921		13901		License requirement.
10922		13902		Motor carrier license.
10923		10903		Frt. forwarder license.
10924		13904		Broker license.
10925		13905		Duration of licenses.
10926				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		13908		Replacement unified registration system.
11101	11101	14101	15701	Providing transp. (Common carrier oblig'n).
11101(d)		13710(b)		Undercharge—contract vs. common disputes.
11102				Classification of carriers.
11103	11102			Use of terminal facilities.
11104	11103			Switch connections.
11105				Protective services (heat and cold).

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
11106				Identification of vehicles.
11107		14102		Leased vehicles (owner-operators).
11108				Water—unreas. discrimination.
11109		14103		Lumping.
11110		14104		HHG operations.
11111				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	11124			War Emergencies.
11141	11141	14121	15721	Reports and records.
11142	11142			Uniform accounting system.
11143	11143			Depreciation charges.
11144	11144	14122	15722	Records inspection and retention.
11145	11145	14123	15723	Reports by carriers.
11161				Railroad Accounting Principles Board (RAPB)
11162				Cost accounting principles.
11163	11161			Implementing accounting principles.
11164	11162			Certification of carrier's accounting.
11165	11163			Cost info. made available.
11166	11164			Cost reporting.
11167				RAPB report.
11168				RAPB funding authorized.
11301				Securities issuances.
11302				[previously repealed.]
11303	11301			Equipment trusts.
11304		14301		Security interests in motor vehicles.
11321				Ownership of water carriers.
11322	11328			Restrictions on officers & directors.
11323				Ownership of carriers by HHG frt. forwarders.
11341	11321	14302(f), 14303(f)		Scope of authority (antitrust immunity).
11342	11322	14302		Pooling.
11343	11323, 10902	14303(a), (g)		Mergers & consolidations.
11344	11324	14303(b)		Merger procedures—general.
11345	11325			Merger procedures—rail.
11345a		14303(c)–(e)		Merger procedures—motor.
11346				Expedited merger procedure.
11347	11326			Labor protection for mergers.
11348		14303(h)		Authority over noncarriers in control.
11349		14303(i)		Temporary auth'y for mergers.
11350				Mergers—DOT sponsorship.
11351	11327	14303(j)		Mergers—supplemental orders.
11361–11367				Financial Structure.
11501		14501		State preemptions.
11502				Conference & 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 enjoin 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		14905		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	14910	16105	General criminal penalties.
11915	11907	14911	16106	Corporate liability.
11916		14913		Conclusiveness of rates.
11917		14912		HHG weight-bumping.

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. INOUYE,
J.J. EXON,
JAY ROCKEFELLER,
JOHN BREAUX,
Managers on the Part of the Senate.

JOURNAL

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Pursuant to clause 5 of rule I, the unfinished business is the question of the Chair's approval of the Journal of December 14, 1995.

Pursuant to clause 1, rule I, the Journal stands approved.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1996—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104–147)

The SPEAKER pro tempore laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I am returning herewith without my approval H.R. 1977, the ''Department of the Interior and Related Agencies Appropriations Act, 1996.''

This bill is unacceptable because it would unduly restrict our ability to protect America's natural resources and cultural heritage, promote the technology we need for long-term energy conservation and economic growth, and provide adequate health, educational, and other services to Native Americans.

First, the bill makes wrong-headed choices with regard to the management and preservation of some of our most precious assets. In the Tongass National Forest in Alaska, it would allow harmful clear-cutting, require the sale of timber at unsustainable levels, and dictate the use of an outdated forest plan for the next 2 fiscal years.

In the Columbia River basin in the Pacific Northwest, the bill would impede implementation of our comprehensive plan for managing public lands—the Columbia River Basin Ecosystem Management Project. It would do this by prohibiting publication of a final Environmental Impact Statement or Record of Decision and requiring the exclusion of information on fisheries and watersheds. The result: A potential return to legal gridlock on timber harvesting, grazing, mining, and other economically important activities.

And in the California desert, the bill undermines our designation of the Mojave National Preserve by cutting funding for the Preserve and shifting responsibility for its management from the National Park Service to the Bureau of Land Management. The Mojave is our newest national park and part of the 1994 California Desert Protection Act—the largest addition to our park system in the lower 48 States. It deserves our support.

Moreover, the bill would impose a misguided moratorium on future listings and critical habitat designations under the Endangered Species Act. And in the case of one endangered species, the marbled murrelet, it would eliminate the normal flexibility for both the Departments of the Interior and Agriculture to use new scientific information in managing our forests.

Second, the bill slashes funding for the Department of Energy's energy conservation programs. This is short-sighted and unwise. Investment in the technology of energy conservation is important for our Nation's long-term economic strength and environmental health. We should be doing all we can to maintain and sharpen our competitive edge, not back off.

Third, this bill fails to honor our historic obligations toward Native Americans. It provides inadequate funding for the Indian Health Service and our Indian Education programs. And the cuts targeted at key programs in the Bureau of Indian Affairs' are crippling—including programs that support child welfare; adult vocational training; law enforcement and detention services; community fire protection; and general assistance to low-income Indian individuals and families. Moreover, the bill would unfairly single out certain self-governance tribes in Washington State for punitive treatment. Specifically, it would penalize these tribes financially for using legal remedies in disputes with non-tribal owners of land within reservations.

Finally, the bill represents a dramatic departure from our commitment to support for the arts and the humanities. It cuts funding of the National Endowments for the Arts and Humanities so deeply as to jeopardize their capacity to keep providing the cultural, educational, and artistic programs that enrich America's communities large and small.

For these reasons and others my Administration has conveyed to the Congress in earlier communications, I cannot accept this bill. It does not reflect my priorities or the values of the American people. I urge the Congress to send me a bill that truly serves the interests of our Nation and our citizens.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *December 18, 1995.*

The SPEAKER pro tempore. The objections of the President will be spread at large upon the Journal, and the message and bill will be printed as a House document.

MOTION OFFERED BY MR. REGULA

Mr. REGULA. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. REGULA moves to refer the veto message and bill to the Committee on Appropriations.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. REGULA] is recognized for 1 hour.

Mr. REGULA. Mr. Speaker, I yield 15 minutes to the gentleman from Wisconsin [Mr. OBEY] for purposes of debate only, and yield back 30 minutes.

□ 1800

Mr. OBEY. Mr. Speaker, I did not understand the motion of the gentleman from Ohio [Mr. REGULA]. Is the gentleman trying to yield back half of the debate time?

Mr. REGULA. Mr. Speaker, that is correct. There will be 15 minutes on our side and 15 on the side of the gentleman from Wisconsin.

Mr. OBEY. So is the gentleman asking unanimous consent to yield back half the time?

Mr. REGULA. Mr. Speaker, I do not think we have to do that. I think I control the entire hour, and therefore, I can yield back 30 minutes and yield 15 to the gentleman from Wisconsin and retain 15 on our side.

The SPEAKER pro tempore. (Mr. HASTINGS of Washington). The gentleman from Ohio is correct; the gentleman from Ohio controls the time.

Mr. OBEY. I understand that, Mr. Speaker, but he will have 15 and we will have 15?

The SPEAKER pro tempore. That is correct.

The gentleman from Ohio [Mr. REGULA] is recognized.

GENERAL LEAVE

Mr. REGULA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the veto message of the President to the bill, H.R. 1977, and that I may include tabular and extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. REGULA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker and my colleagues, I think the President's last sentence is the one that I would quote. President Clinton said: ''I urge the Congress to send me a bill that truly serves the interests of our Nation and our citizens.''

Well, I want to say, Mr. President, we have already done that. For reasons that I do not quite understand, the President has chosen to not accept this bill.

I think it really boils down to this: That if you listen carefully to the veto message, it clearly says we must spend more money, more for arts, more for various other programs, and I would like to go through the veto message and point out some of the facts that are not quite accurate in this message.

Perhaps the best answer on this is the truth. It says that we need to protect America's natural resources—well, the bill, 1977, does that very well—our cultural heritage, and promote the technology we need for long-term energy conservation and economic growth.

I would point out that this bill provides 80 percent more money than we did in 1988 for energy conservation. A lot of this is corporate welfare, the very thing the President is opposed to, and yet here he is vetoing a bill on the strength of what we are saying to the private sector that many of these programs should be funded.

The President mentions other services to Native Americans. I would point out that in our negotiations with the White House, we put $27 million more, more than they requested. Here he is vetoing this on the basis that there is not enough for the Native American programs. Then we see about clear-cutting in the Tongass National Forest. I have looked at the bill and I do not find the words ''clear-cutting.'' I do not

know where that idea came from. Apparently we had an imaginative veto message-writer.

Then: Require the sale of timber at an unsustainable level. Again, there is no detail. Dictate the use of an outdated forest plan for the next 2 fiscal years.

Let me point out that our bill reduces the cut as provided in that forest plan from 450 million board-feet to about 420 million board-feet, and actually, we only put in enough money for 320 million board-feet in fiscal year 1996. The Columbia River Basin was designed to move forward so that people in that area would know what was going to happen in terms of land-use planning, and I think it is only fair that they have that opportunity.

The California Desert is mentioned in here. Well, under the present program operated by the Park Service, we had 38 big horn sheep that died as a result of mismanagement. All we said to the Park Service in the bill is, give us a plan. We put the money in for the plan. We say, in the meantime, let BLM operate it. They have been doing it very well; we did not have 38 big horn sheep dying when BLM was in charge.

So Park Service, come out with a plan and we will be glad to look at it and see if we can put it in the right place.

Then we talk about the Endangered Species Act. Let me point out that the Endangered Species Act has not been authorized, and that has been true for the last couple of years. When the present minority was the majority, they did not choose to reauthorize the Endangered Species Act, and under the Rules of the House, we cannot appropriate for bills that are not authorized.

This is the reason. We put the money there subject to an authorization. So I think it is incumbent on the Members of this House to get an authorization bill, and if so, the money is there to manage the endangered species.

I mentioned the energy conservation program, 80 percent more than in 1988, a very large growth over the last several years. We finally took a look because we want to manage these programs better to see what works and what does not and what should be done in the private sector, and we found that, clearly, many of these programs should have a responsibility in the private sector.

Then we talked about historic obligations toward Native Americans with $27 million over what the negotiators requested. I would point out that Indian health services are ahead, more than last year. In every instance, we have attempted to put in responsible amounts for the various programs.

To veto this bill on the basis of we just do not spend enough money, that is the essence of the message, I think clearly that is not what the American people want as far as more spending.

Mr. LIVINGSTON. Mr. Speaker, will the gentleman yield?

Mr. REGULA. I yield to the gentleman from Louisiana.

Mr. LIVINGSTON. Mr. Speaker, I appreciate the gentleman yielding.

Mr. Speaker, I am absolutely incredulous that after all of the effort the gentleman from Ohio has undertaken with all of the members of the subcommittee and all of the members of the Committee on Appropriations and all of the Members of this House, to undertake this bill and carefully craft it in conjunction with the Senate, put it through three times in the House of Representatives, because the Senate had trouble, and we had difficulty making sure that there was a compromise between the Western States and the environmentalists and those concerned about Native Americans, that after all of this difficulty, the President sees fit to veto the bill, from what I can understand, for totally specious reasons.

I have heard the veto message, and the President is constitutionally capable of vetoing this bill; and because of this message, we will send it back to committee. But I cannot assure the President that he is going to get a bill that is any better than the one that left this House. In fact, I dare say it could be worse, because as I understand the gentleman's comments, we have given more money than he even asked for for Native Americans, and yet he says it was not enough.

We have tackled the Tongass forest timber cut, and answered many of his problems, as pointed out by the gentleman from New York [Mr. BOEHLERT], the last time the bill came through.

In the energy conservation effort, there is more money in it than there was in 1988, as the gentleman pointed out. That is corporate welfare. I happen to believe that that is wasted money, it is corporate pork, but it is the President's priorities. We put the money in for the President.

Now, he has vetoed this bill, for Lord knows what reason, and we are going to have to send it back; and evidently, the President is content to tell the 133,000 people who work for the Interior Department or work under the jurisdiction of this bill, have a good Christmas, but do not worry about going to work, because I don't care. I live in the White House, and I am going to a very nice Christmas with my family.

I just have to say that I am indeed incredulous. I think that this is a miserable way to govern, and I hope that the American people understand. We put a good, decent, well-organized, welcome, promised bill on the table, on the desk of the President of the United States, and he chose to veto it for specious reasons and put all of these people out of work.

I thank the gentleman for yielding to me.

Mr. REGULA. Mr. Speaker, I thank the gentleman for his contribution. He is absolutely right. As we see visitors being turned away from national parks, from the Smithsonian, from the National Gallery, what in fact the President is doing is holding the American people hostage for his own political purposes. The people who pay for these facilities, the people who enjoy these national treasures are being denied access simply because the President hopes to gain some political advantage.

It is clear that if you look at the numbers, we have responded to these programs as effectively as possible, given the budget and numbers, and this message is, loud and clear, just spend more money, do not worry about whether it is managed well. The answer to all of the problems is simply to pile on the debt for future generations, spend it today, let them pay for it tomorrow.

We vote here with a voting card; as I have said to people, it is the world's greatest credit card because we vote now and we send the bill to future generations. This is a classic example of doing that.

Mr. Speaker, I reserve the balance of my time.

Mr. OBEY. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, I think we ought to make very clear what is happening here tonight. Last week the Congress adjourned without passing the continuing resolution that would have kept the Government open, and if you took a look at what happened around this town over the weekend, you saw that both the Republicans and the Democrats in the Senate stayed in town and talked with each other about the budget. You saw the House Democrats stay in town and in fact we were in meetings for some 11 hours over the weekend, trying to find ways that we can help resolve the problem.

However, my understanding is that our good friends on the Republican side of the aisle in the House were told they could leave town: There would be no votes until late Monday. That is fact No. 1.

Fact No. 2 is that because there is no continuing resolution now in effect, you do have significant portions of the Government shut down. Now, what is going on is that evidently the Republican message team in their caucus has decided that there ought to be 15 minutes or half an hour debate on this bill on the next bill so that people can play pin the tail on the President in terms of having another cat-and-dog fight about who is to blame for the shutdown of Government. That is what is going on. So we have an artificial debate here that we do not even need to have.

Under normal processes, this bill would simply be referred to the committee with no debate and no vote, unless the majority party decided they wanted to try to override the veto. So what is going on here is another one of those little debates that further, I think, discredits the Congress in the eyes of the American people; and I think that is regrettable, but since we are here, I have no choice but to try to expose what is going on.

Now, what is happening, and what you will hear for the next 20 minutes

is, our Republican friends will be trying to tell the country, through the TV cameras focused here on this floor, that somehow the President is to blame for the shutdown of Government, even though the reason the Government is shut down is because they would not allow a continuing resolution to come to the floor to keep it open. So they are trying to shift attention from their lack of performance on the CR to this bill.

The President had every right to veto this bill. He told the Congress ahead of time if they sent it to him in this form, he would veto the bill. He gave them forewarning of that. In his veto message he points out that, among other things, his reason for doing so is because what this bill does for clear-cutting in the Tongass. That is an important policy issue.

We do not just serve as accountants in the Congress, believe it or not. We and the President also have to make an occasional decision, believe it or not, on policy; and the President chose to stand on principle and veto this bill for, among other reasons, because of what it does to clear-cutting in the Tongass.

I am not going to debate that here tonight because there is no reason for us to debate that. What we should be doing tonight, rather than having a meaningless half-hour debate on this vote, is simply passing a continuing resolution so that people who work for the Government for a living can do their jobs.

That is what we should be doing. But instead, we will get this sham debate which substitutes a motion for movement. It is not going to do anybody any good.

I would simply make one additional point. The reason we are stuck here tonight is because the policy arguments that are going to be worked out after the President's veto should have been worked out 4 months ago. However, because the majority party felt that they had to first pass their contract items, and then because they chose to load up the Interior bill and the HUD bill with a bunch of extraneous measures that had no business in an appropriation bill, we spent the last 4 months in a debate between Republicans in the House and Republicans in the Senate on a lot of these policy matters.

□ 1815

The Interior bill was brought down a number of times because people on both sides of the aisle said that it was not the right bill to present to the President.

All I will say tonight, and I would prefer that we not be saying anything at all, because as I said, this is a meaningless debate on a bill that is going nowhere except to committee.

What ought to happen tonight is that instead of having this meaninglessss ''who shot John'' debate, we should simply have a motion on this floor to pass a continuing resolution to keep the Government open while these differences between the President and the Congress are resolved. That is the rational thing to do. It is the nonpolitical thing to do. But evidently we are not going to do it.

About the only other thing I can see that would make any sense in the Christmas season is at this point to take up a collection in the House so that we could buy a toy train for the folks who are running the House these days, because they certainly cannot run a real one.

Mr. REGULA. Mr. Speaker, I yield 2 minutes to the gentleman from Washington [Mr. NETHERCUTT], a member of the subcommittee.

Mr. NETHERCUTT. Mr. Speaker, I was interested to listen to the previous speaker's comments about not wanting to have this debate or not needing to have this discussion tonight. But to the contrary, as a freshman member of this subcommittee I can certainly attest to the hard work that was engaged in to try to reach a reasonable compromise on this massive Interior bill that has to deal with the Nation's public lands. What has to be said here is that after a great deal of debate and discussion and grave consideration given to the good and the bad of this bill, we came to the President with a darn good bill.

And talk about pinning the tail on the donkey, I think precisely where the tail needs to be pinned is downtown. The President vetoed a very good bill for some specious reasons, in my judgement, not the least of which was one affecting my area of the country, the eastern side of the State of Washington in the Pacific Northwest.

The East Side Ecosystem Management Study was a reason that the President identified as part of the veto message. This astounds me, simply becuase this is a study that the taxpayers have paid $24 million on and really have not seen any reports of its results or any scientific findings that are to be presented.

What we did, in the analysis of the subcommittee and the full committee, in the House as well as the Senate, was to say to the Bureau of Land Management and the Forest Service, give us your science, let us see what we spent $24 million on in this Congress. We have even given them another $4 million to give more time for public input and more publication of the scientific findings.

So for the President to stoop as low as he did in using a study as the reason for a veto is astounding. I think it emphasizes the fact that this bill should not have been vetoed, it should not have been vetoed for this reason, and it was an improper act on the part of the President.

Mr. OBEY. Mr. Speaker, I yield 2 minutes to the gentleman from Colorado [Mr. SKAGGS].

Mr. SKAGGS. I thank the gentleman for yielding me the time.

Mr. Speaker, why are we here talking about this December 18? We finally sent a conference report to the President on this bill 2½ months late. Why was it 2½ months late? Because the folks on this side of the aisle insisted in jamming all manner of ill-considered and ill-conceived policy matters into this bill.

That is one reason we need a continuing resolution, because of the delay and the delay and the delay in getting the work of this place done on time, because they could not reach agreement between the right wing and the extreme right wing within the Republican conference on many of these policy issues. That is why a bunch of the appropriations bills are not done.

We need a continuing resolution. Why do we not have a continuing resolution? Because of the illogic over here in saying to the President of the United States, even though our homework is late, we want extra credit. We are insisting on concessions on other things even though it is our fault for not having gotten our work done on time.

How in the world does that make any sense to the American people? It makes none.

The responsibility for being in the fix that we are now in, with this bill being vetoed and with no continuing resolution, relates entirely to the misguided policies of trying to jam extraneous policy matters into these appropriation bills, not getting them done on time and then saying, ''Not our fault, and besides, we would like some additional concessions, Mr. President, if you please.''

Let us get back to what really needs to be done here, which is getting this Government open, acknowledging responsibility, being accountable for not having run the House of Representatives responsibly as the majority party is supposed to be doing.

Mr. REGULA. Mr. Speaker, I yield 1½ minutes to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. I appreciate my colleague yielding me the time.

Mr. Speaker, I wanted to mention that in the statement by my colleague from Ohio, he mentioned the East Mojave as one of the reasons the President outlined for vetoing this bill. The work done on the East Mojave was a reflection of many of the major efforts made by my colleague from Ohio. He went out of his way to try to find compromise wherever possible to see if we could not put this bill in a form that would make sense. Obviously the President's people have not given him solid information regarding what is going on in that area. Instead of harming the environment, my chairman's compromise is attempting to solve the problems that have been created by the Park Service mismanagement of the area.

Let me make that point very clear. The House had created a scenic area, not a park. The House in turn had directed the Park Service to live with long-standing multiple use of the area.

Instead, they began putting up no trespass signs. Instead, they began excluding families from the area. In the process, their mismanagement led to the death of 38 bighorn sheep. They died as a result of mismanagement and a lack of a plan.

The gentleman created the opportunity for a plan by providing money for that planning process. The gentleman responded to the President's people in developing that plan. And the President was led to believe that something else was the case.

The chairman has done a very fine job, deserves support and recognition from the President, not a slap in the face by way of a veto pen.

Mr. OBEY. Mr. Speaker, I yield 2 minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, I thank the ranking member for yielding me the time, and agree with him that obviously our friends on the right are trying to play pin the tail and they are hopeful that it hits the occupant of the White House.

We have heard about Corrections Day. This is nonsense day. I have not heard much, during the numerous times of debate on this legislation, about a new effort in America called AmeriCorps. I want to spend my remaining time addressing the House on AmeriCorps.

AmeriCorps, as many Members know, is patterned after the old wildly successful CCC camps. There are 1,200 AmeriCorps camps in the United States with thousands of young people. They are involved in helping the Red Cross and Boys' Club, and this bill kills it.

There are thousands of young people in the United States working on AmeriCorps, building homes for the homeless under Habitat for Humanity, and this bill kills it. There are thousands of young people working in our parks and our playgrounds and our forests and our streets and our nursing homes, and this bill kills it.

What did Speaker GINGRICH say about the participants, the young Americans who participate in AmeriCorps? He said, ''They become not only useless, they become dangerous.''

And he is not the only one on the far right, among our friends on the far right, who do not know what is right about AmeriCorps.

Some say the cost of AmeriCorps is $30,000 per client, per corpsman. That is not right. They are paid a minimum wage, and then they are given a $4,700 scholarship. That does not come to anywhere near $30,000.

So this bill and/or the other bill that is going to be before us tonight kill AmeriCorps, and I encourage my colleagues to vote against this and the other, for that and other reasons.

Mr. OBEY. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Speaker, why did this bill arrive on the President's desk 75 days late? It arrived there because it became the playground of special interest groups while it was still on Capitol Hill.

The longest-running taxpayer ripoff in the history of the United States is the Mining Act of 1872. It allows companies, in many cases foreign companies, to mine taxpayer-owned land in the United States and not to pay the taxpayers adequately for that. So we have been engaged in a battle for a long time with those special interest groups.

Unfortunately for my colleagues on the Republican side of the aisle, many of them, most of them, supported the mining interests, wanted to keep this ancient law on the books, this law that gave a windfall to so many companies. So this bill was dragged down time after time after time when these special interest groups kept running into resistance on Capitol Hill.

The next thing you know, the committee failed to meet its deadline of October 1, then they failed to meet a November 1 deadline, then they failed to meet a December 1 deadline. And finally, finally, finally in the middle of December, they submitted their bill to the President.

Part of it was right. They finally got part of this Mining Act of 1872 provision correctly, but there are other parts that were not right. Unfortunately, this bill turned out to be an environmental disaster when it was sent to President Clinton.

I am sorry to say that, too, because the gentleman from Ohio, who is a friend of mine, is a moderate person on his record on the environment. In fact, he has been very good on many of his votes, in fact occasionally very, very good in his votes.

But he is an endangered species, just like those addressed in the bill, a moderate Republican committed to the environment. He has labored long and hard to fight off the worst of the environmental provisions in this bill, but unfortunately for my colleague from Ohio, he just could not keep all of the bad provisions out, and forced a veto by President Clinton for good reason.

The American people want change in this Government but they want us to protect our natural resources. We only get one crack at it when it comes to national parks, when it comes to species and plant life in this country. It is something the American people expect us to do right. When the special interests railroad through a bill and put in these awful provisions, the President was right to veto it.

Having said that, though, this veto has nothing to do with shutting down the Government. The Republicans understand, we all understand, a simple temporary spending bill called a continuing resolution could keep this department, every department that is touched by this bill and all the other departments that have been closed in business.

But my friends on the Republican side of the aisle do not want that to happen. This Christmas gift to 200,000 Federal employees is no temporary spending bill, send them home without pay, with the promise that maybe they will get paid at some future date.

Well, tonight they are trying to blame President Clinton for that. They should not. They ought to blame the special interests for dragging this bill down and making it 75 days late. They ought to blame their own leadership for failing to pass a continuing resolution which would keep the Government in business.

□ 1830

Mr. OBEY. Mr. Speaker, I yield myself the remainder of my time.

Mr. Speaker, I have known the gentleman from Ohio a good long time and the gentleman from California a good long time, and they are both fine legislators and they are both tough adversaries. I know that especially on the bill which will come up next that we have had some very tough issues and some very heated words exchanged on the floor and in committee between various Members in the House.

Having said that, I know full well that if these bills had been left to the judgment of the gentleman from Ohio and the gentleman from California without extraneous political pressures intervening, that both of them would probably by now have become law, and I think that both bills would have been in better shape by far than the bills which the President was forced to veto.

None of us can do anything about the circumstances in which these bills are being debated. But I do simply want to take this time to say that after we discuss all of these bills tonight, after we discuss this bill and the VA–HUD bill which is coming next, and the vetoes of both of them, there is remaining one action which we could take which would do something real to open the Government tonight. That would simply be to pass House Joint Resolution 131, which is at the desk, which is introduced by the gentleman from Missouri [Mr. GEPHARDT], myself, and the gentleman from Pennsylvania [Mr. MURTHA], which would simply keep the Government open from now until January 26, so that we could, in fact, resolve the many differences which remain between the White House and the Congress on these bills and many others. As you know, the majority leader in the Senate even indicated at one point his preference for a longer continuing resolution than that. I happen to think he was right when he said that.

What we have now is the miserable spectacle of a series of 2- and 3-day CR's, intermittent Government shutdowns, all for the purpose apparently of the leadership of the this House gaining some leverage in the other discussions going on over the budget. I think that is illegitimate.

The reason the Government is shut down has nothing whatsoever to do with the budget discussions about 7-year budget figures going on in other

places in this building. The reason the Government is shut down is simply because the appropriation bills did not work their way through Congress in a timely fashion and, when they did, they were burdened with special-interest provisions which required the President to veto them, and in several cases were burdened with reductions so savage that, in fact, in the other body they would not even take them up.

So I would simply say that despite all of the hyperbole we will hear tonight, if we want to do something constructive for the people we represent after that debate is finished, we will see something similar to House Joint Resolution 131 brought out so that Government can stay open while we resolve our differences. That is the rational thing to do.

Mr. REGULA. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker and my colleagues, just to keep the record straight, we do not deal with mining reform in this bill. We put in, as requested by the administration, a moratorium on the issuance of patents, and this puts a hold on any new giveaways until such time as the authorizing committees deal with the mining.

Let me also point out that we are up over last year on parks, on the Smithsonian, the things that the public enjoys. We make sure they have access to them, that they have an opportunity to use those, the National Gallery and the forests and fish and wildlife, recreation facilities.

We really divided this bill into three categories: The must-do's, the need-to-do's, and the nice-to-do's, and some of the nice-to-do's had to fall out. Why? Because we want to reduce the deficits. It is that simple.

In this bill we are $1.4 billion less than in 1995 in budget authority. We are $600 million less in spending, in actual outlays, in fiscal 1996. It was tough, frankly, and the President is saying, ''Hey you are not spending enough money.'' But I do not think it is fair to the young people, to future generations, to borrow money and saddle them with paying for all of the nice-to-do's. Energy conservation, where you fund programs for private companies, maybe it is nice to do. But should we be borrowing the money to pay for these? I do not think so.

I think what the President is saying is his veto message is very simple: ''You are not spending enough money.'' But I believe that the American voters said in 1994, in November, ''We want less spending. We want the budget balanced. We want the deficit reduced. We do not want to saddle future generations with our bills.'' It is that simple.

I have to agree with them. I do not think we should saddle future generations. We took a hard look at every program and said, ''How can we manage this a little more effectively?''

The Committee on Appropriations are the managers of Government. They determine how much money should be expended on various programs, and we said these are nice to do but they are not a value that makes it a good policy to borrow money to pay for them, and certainly I think that we did a responsible job.

I regret that the President did not carefully examine the bill, for example, saying that it provides clear-cutting in the Tongass. Totally wrong. There is not a word about clear-cutting in the Tongass. We reduced the cut, as a matter of fact, from the present level, and I regret that the veto message does not more accurately portray the real facts of this bill and that the American people are denied the benefits.

I would say to my colleagues, vote ''yes'' on the motion to refer this to the committee.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Without objection, the previous question is ordered on the motion.

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio [Mr. REGULA].

The motion was agreed to.

A motion to reconsider was laid on the table.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1996—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104–148)

The SPEAKER pro tempore laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I am returning herewith without my approval H.R. 2099, the ''Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996.''

H.R. 2099 would threaten public health and the environment, end programs that are helping communities help themselves, close the door on college for thousands of young people, and leave veterans seeking medical care with fewer treatment options.

The bill includes no funds for the highly successful National Service program. If such funding were eliminated, the bill would cost nearly 50,000 young Americans the opportunity to help their community, through AmeriCorps, to address vital local needs such as health care, crime prevention, and education while earning a monetary award to help them pursue additional education or training. I will not sign any version of this appropriations bill that does not restore funds for this vital program.

This bill includes a 22 percent cut in requested funding for the Environmental Protection Agency (EPA), including a 25 percent cut in enforcement that would cripple EPA efforts to enforce law against polluters. Particularly objectionable are the bill's 25 percent cut in Superfund, which would continue to expose hundreds of thousands of citizens to dangerous chemicals and cuts, which would hamper efforts to train workers in hazardous waste cleanup.

In addition to severe funding cuts for EPA, the bill also includes legislative riders that were tacked onto the bill without any hearings or adequate public input, including one that would prevent EPA from exercising its authority under the Clean Water Act to prevent wetlands losses.

I am concerned about the bill's $762 million reduction to my request for funds that would go directly to States and needy cities for clear water and drinking water needs, such as assistance to clean up Boston Harbor. I also object to cuts the Congress has made in environmental technology, the climate change action plan, and other environmental programs.

The bill would reduce funding for the Council for Environmental Quality by more then half. Such a reduction would severely hamper the Council's ability to provide me with advice on environmental policy and carry out its responsibilities under the National Environmental Policy Act.

The bill provides no new funding for the Community Development Financial Institutions program, an important initiative for bringing credit and growth to communities long left behind.

While the bill provides spending authority for several important initiatives of the Department of Housing and Urban Development (HUD), including Community Development Block Grants, homeless assistance and the sale of HUD-owned properties, it lacks funding for others. For example, the bill provides no funds to support economic development initiatives; it has insufficient funds for incremental rental vouchers; and it cuts nearly in half my request for tearing down the most severely distressed housing projects. Also, the bill contains harmful riders that would transfer HUD's Fair Housing activities to the Justice Department and eliminate Federal preferences in the section 8, tenant-based program.

The bill provides less than I requested for the medical care of this Nation's veterans. It includes significant restrictions on funding for the Secretary of Veterans Affairs that appear designed to impede him from carrying out his duties as an advocate for veterans. Further, the bill does not provide necessary funding for VA hospital construction.

For these reasons and others my Administration has conveyed to the Congress in earlier communications, I cannot accept this bill. This bill does not reflect the values that Americans hold dear. I urge the Congress to send me an appropriations bill for these important priorities that truly serves the American people.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *December 18, 1995.*

The SPEAKER pro tempore. The objections of the President will be spread at large upon the Journal, and the veto message and the bill will be printed as a House document.

MOTION OFFERED BY MR. LEWIS OF CALIFORNIA

Mr. LEWIS of California. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. LEWIS of California moves that the message, together with the accompanying bill, be referred to the Committee on Appropriations.

The SPEAKER pro tempore. The gentleman from California [Mr. LEWIS] is recognized for 1 hour.

Mr. LEWIS of California. Mr. Speaker, I yield 15 minutes to the gentleman from Ohio [Mr. STOKES] for the purposes of debate only, and yield back 30 minutes.

The SPEAKER pro tempore. The Chair recognizes the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I regret that the committee finds itself at this point in receipt of the President's veto of this very important measure. It clearly reflects a considerable disservice to the President on the part of his staff, who obviously have misinformed him regarding the work of the conference committee that presented this bill and sent it to the President's desk.

It is very apparent that they have not been straightforward regarding the variety and mix of the efforts the committee went through. The conference met on November 16 of this year. In the midst of that conference, we met with the President's representative, Mr. Panetta of California. During that discussion, Mr. Panetta indicated to the conferees that the President was likely to veto this bill unless the bill had $2 billion to $2.5 billion more in allocation. So it was apparent that the President does not like the allocation that this committee received.

Presuming that there was no additional money available to the committee, it was clear that we would not be able to meet all of the President's targets as we allocated the money that was available to us. The President's representative indicated to the members of the conference that he really believed it was likely that $2 billion or more would be forthcoming from somewhere. The implication was that that money would come from a reallocation of what Mr. Panetta kind of assumed would be a veto of the defense measure. As we all know, the defense bill became law, and that appropriations availability did not come to our subcommittee.

So there was nowhere to move in terms of many of the areas the President is concerned about. At that point in time, over a month ago, we said to Mr. Panetta and anybody else who would listen, ''Please, tell us what you would do from your perspective with these allocations to make this bill better. Please, help the President come to the desk or come to the table and talk with us about these very important programs.''

First, I think it is important for us all to revisit one more time: This bill represents in excess of $80 billion of expenditure, important programs that involve areas such as VA medical care, significant programs like EPA, all of the country's housing programs.

□ 1845

They also provide the funds for NASA and those programs the President is concerned about that relate to our international partnership with the Russians and others as we explore space, for example, very difficult and competitive allocations.

We urged the President's people to come to the table. He suggests that one of the problems with this bill is that there is not adequate funding, and, indeed there is no funding, for the national service programs, namely AmeriCorps. That program under the President's proposal would increase by some 300 percent over 3 years, and yet the program has had no evaluation to this point. Clearly, programs that work well deserve support. Programs that have not been evaluated at least ought to be evaluated before their funding is expanded.

It would appear that much of the President's objection to this bill involves his desire to expand the funding for the Environmental Protection Agency. If that is the case, we are willing to listen to the President's case. We simply ask him to come to the table. We have only got so much money to go around in this bill. If we are to shift money as we send it back to conference, to EPA, where does it come from? Would the President suggest it should come from veterans' medical care? If so, let the President step up to the table and say so. Money is not going to suddenly appear from nowhere.

It is also very apparent that the President has been misled relative to what this bill contains as it relates to EPA and EPA legislation. Literally we have stripped from this bill most of the serious contentions that flowed around riders as the bill left the House. There are four pieces of legislative language in the bill; three of them involve language that has been in a bill in the past that has been acceptable to the administration. It is very clear that the President is really objecting to this bill because there is not enough money here. As my colleague from Ohio said in the previous bill, the President seems to want to go forward with business as usual. He actually believes that we can tap the till, spend money we do not have, and go on blithely forward suggesting that future generations will pick up the tab when it is their turn.

Mr. President, this is the bill that begins the point where we move toward balancing the budget in a 7-year period. You have made that commitment. No other bill has more discretionary spending that can be impacted in a way that makes sense for the American public and the American taxpayer. We are asking you, Mr. President, to reevaluate this, come to the bargaining table, tell us what your priorities are, and we are more than willing to work with you. I must say the time frame is very narrow and the window for cooperation is closing quickly. Mr. President, we are looking for your leadership. We would hope that your people would move away from the rhetoric and come to the table and bargain in good faith.

Mr. Speaker, I reserve the balance of my time.

Mr. STOKES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when this bill was on the floor approximately a week or 10 days ago, we said to the House at that time that it was the intention of the President to veto this bill. At that time I enumerated the various reasons that the President has specified as to why he would veto this bill, and this morning when the President vetoed this bill, he enunciated many of the very same reasons that I had stated when I told the House that this bill was going to be vetoed.

It is true that allocation is a very real part of the reason that the President has vetoed this bill, and the fact that sufficient money has not been prioritized and put into those areas of the bill that the President is particularly concerned about in terms of his own priorities for the American people.

But all of the rationale for his vetoing this legislation cannot be attributed to the allocation alone. I think it is very important for us to take just a few moments to understand what the President has said with reference to his reasons for vetoing the bill.

In his message he said, ''The Republican Congress has shut down the Federal Government because they have not passed a budget for this year and because they want to make the price of opening the Government up my acceptance of 7 long years of unacceptable cuts in health care, education, and the environment; in research and technology, cuts that are not necessary to balancing the budget, and would have an adverse effect on our way of life and on the strength of our economy.''

He said further, ''It is wrong for the Congress to shut the Government down just to make a political point the week before Christmas. It is unfair to the American people and unfair to the public employees.'' The President said, ''This is a season of peace and it should be a season of cooperation, not rancor or threats. The Congress should reopen the Government.'' He is ready to work with them to balance the budget in a way that reflects our values, and that is consistent with the resolution to which we both agreed when the Government was reopened a few weeks ago.

He says in his veto message, ''I say again when I said a few weeks ago I

would work with the Congress to balance the budget in 7 years, that the Congress commit to a budget that protects the environment. These bills I veto today I do so because they do not meet that test. For 25 years leaders of both parties have recognized that our party is stronger when we control pollution and protect public health. Environmental protection is not, or at least it never has been until now, a partisan issue. It is an American issue. It is an American issue outside Washington. The Republicans in this Congress have attempted to roll back decades of bipartisan environmental protection.'' The President said ''It is wrong, and I cannot permit it to happen.''

He said, ''They have sent me legislation that would give our children less clean drinking water.'' He doesn't say anything about money there. He says ''legislation that would give our children less clean drinking water, less safe food, dirtier air. If I sign these bills, I would be condemning more than 10 million children under the age of 12 to living near toxic waste sites that might not be cleaned up for years. Therefore, in the interests of our children, I am vetoing these measures, because they would cripple these kinds of environmental protections.''

The President goes on and cites many other substantive reasons why he has vetoed this legislation, so I do not think it is fair to castigate the reasons for the veto here by referring to the allocation alone as being the principal reason for the vetoes.

The President has some very substantial reasons, those of which I have enumerated here. I think that it is important for the House to understand that we could have avoided this veto by forcing the subcommittee to take the kind of action the President has requested that they take so he would not have had to veto this legislation. Now that he has had to veto it, pursuant to that, I think we have to accept the fact that it is important for us to commit this bill back to the appropriations subcommittee and alter the bill in such a way that it can go to the President for his signature.

Mr. Speaker, I reserve the balance of my time.

Mr. LEWIS of California. Mr. Speaker, I am happy to yield such time as he may consume to the gentleman from Louisiana [Mr. LIVINGSTON], the chairman of the Committee on Appropriations.

Mr. LIVINGSTON. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rose a little while ago with an air of incredulity that the President vetoed the Interior bill, and now I have to echo that incredulity. I am just astounded that the President chose to veto this bill, because, as I understand the gentleman's statement, the President did not engage the gentleman or any of the members of the subcommittee to any substantive degree about the details of this bill.

Mr. LEWIS of California. Mr. Speaker, will the gentleman yield?

Mr. LIVINGSTON. I yield to the gentleman from California.

Mr. LEWIS of California. Mr. Speaker, the gentleman is absolutely correct. I was astonished to have a personal conversation with the President's representative, Mr. Panetta from California. I talked to him on the phone about the details of this bill several weeks ago. It was very apparent that he and/or the President had not addressed the details; that Mr. Panetta came to our conference meeting and it was apparent they were looking for another $2 or $3 billion for this bill to come out of nowhere.

That money was not forthcoming. The President clearly has either not had a chance to come to the table or has been misled by his advisers.

Mr. LIVINGSTON. Mr. Speaker, reclaiming my time, the President's position through apparently Mr. Panetta, his chief of staff, is that there is not enough money for this bill. I would like to carry that forward. We have been through the budget allocation process. We have assessed what it will take for the discretionary budget to meet the targets so that we can hit that balanced budget by the year 2002.

Mr. LEWIS of California. That is correct?

Mr. LIVINGSTON. The President has signed on to the principles of a balanced budget by the year 2002 as recently as 6 weeks ago and signed that continuing resolution, which said that he approved of a balanced budget target by the year 2002, scored by the Congressional Budget Office. Just tonight, we saw an overwhelming vote from Republicans and Democrats alike, 351 Members out of 435 voted overwhelmingly to ask the President to live up to his commitment to that balanced budget by the year 2002.

This is the first step. This bill makes the most major contribution to that balanced budget. Without this bill, one cannot get there, is that right?

Mr. LEWIS of California. Mr. Speaker, if the gentleman will continue to yield, the chairman is exactly on target. The fact is that this is one of the major pools of discretionary money. The entire bill involves some $80 billion of spending, over $60 billion of it discretionary. We are never going to get to a pathway of 2002 and balancing the budget unless we restrain spending within that discretionary pool. The President's people know that. It is a shame they have not given the President the opportunity to evaluate what that means in terms of a balanced budget.

Mr. LIVINGSTON. Mr. Speaker, the President is in effect saying ''I am for a balanced budget by the year 2002,'' and I love his use of the word ''values,'' he uses that a lot, ''but the Congress has to live up to my values,'' whatever those are.

But the point is that the President is saying, ''I am for a balanced budget, but do not make any cuts, and if you do make any cuts, I do not like that one, and I do not like that one, and I do not like that one, but I am for a balanced budget.''

Now, what in effect he is saying is he is for the status quo. He is a stalwart of the status quo. He is for trying to keep the bureaucracy in place. He is for keeping all of the spending that was assessed by the last Congress, the Democrat Congress, in place, locked in, with duplication, inefficiency, heavy spending, heavy taxes that he imposed on the American people 2 years ago. He really does not want any change. Am I wrong?

Mr. LEWIS of California. Mr. Speaker, if the gentleman will continue to yield, I would say to the chairman, I must say that I believe that if some of us could ever get in a room and sit down and talk to the President about the details of a bill like this and show him the importance of impacting this discretionary spending if we are going to balance the budget, that we could get him to respond.

I know he is very busy and has lots to do, but we are now at the point where the rubber meets the road. We are either going to balance the budget or not. This bill is critical to that, and the President has yet to come to the floor.

Mr. LIVINGSTON. Mr. Speaker, if I recall correctly, the gentleman has protected veterans benefits beyond what they were last year.

Mr. LEWIS of California. The gentleman is exactly right. The veterans medical care programs, the one account that is higher in 1995 in this bill by some $400 million, now, that raises the critical point: If the President wants us within our allocation to increase the Environmental Protection Agency, for example, where would one take the money? Perhaps he would suggest VA medical care. But please come to the table and show us your priorities. It is impossible for us to change this bill without some reasonable input.

Mr. LIVINGSTON. Of course, the President says he does not want to take it out of NASA.

Mr. LEWIS of California. He does not want to take it out of NASA. I am sure he does not want to cut VA medical care. Where do we take the money?

Mr. LIVINGSTON. That is the critical question. Unfortunately, I think where we are is that the President simply has not come to the table to tell us where he would take it from.

Mr. LEWIS of California. Mr. Speaker, if the gentleman will continue to yield, let me just say, a number of the agency heads have been extremely forthcoming. Henry Cisneros, in the housing program, has worked closely with us. Dan Goldin in NASA has been very helpful. We have heard little from EPA. For example, everybody knows that the Superfund is broken and we are spending billions of dollars over years in Superfund getting almost no results. Yet we have not heard a thing from the Secretary regarding the way she would fix the Superfund.

It is time for the President's people to be serious about governing and come to the table.

Mr. LIVINGSTON. Mr. Speaker, I know that the gentleman does not have energy conservation in this bill, but I have to say that I was interested that one of the reasons for his vetoing the Interior bill was because it did not provide enough of what he thought were key energy conservation projects, that is, corporate welfare or pork projects for big corporations to provide energy saving initiatives that have not worked for the last 20 years, and at the same time his Energy Secretary flies around the world with an entourage of as many as 150 people, wasting taxpayers dollars. It is all illustrative of a point that comes home to me in watching this process at any rate from fairly up close, that the President is not serious about negotiating. He is only serious about rhetoric.

□ 1900

Mr. LEWIS of California. Mr. Speaker, I would say to the gentleman that it is very important that we get the Government back to work. We need the President at the table. We are willing to work with him, and I certainly hope this discussion helps with that.

Mr. LIVINGSTON. Mr. Speaker, I want to congratulate the gentleman for working very hard. In fact, this was a very difficult bill. This bill was not easy to pass, as the gentleman well knows. We had differences with the Senate. We have had differences among ourselves, Republicans and Democrats, conservatives and liberals, and the gentleman worked hard to get this bill in such a form as to meet all of the concerns of Members of Congress, or at least most of the concerns, so that we got a majority in both houses.

And then the President vetoes this bill without putting his own input into the confection of the bill. It is just astounding to me.

Mr. Speaker, I thank the gentleman for yielding to me.

Mr. LEWIS of California. Mr. Speaker, I thank the gentleman and I reserve the balance of my time.

Mr. STOKES. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. OBEY], the distinguished ranking minority member of the full Committee on Appropriations.

Mr. OBEY. Mr. Speaker, I have said on more than one occasion that the worst mistakes one can make in this town is to believe one's own baloney. I hope that the two friends of mine who just spoke do not believe their own baloney because it is baloney.

The fact is the President made very clear that he would oppose this bill because it did not meet his standards in terms of a balance in funding, and it also did not meet his standards in terms of keeping special interest provisions off the bill.

The President made clear that he was not going to accept a 22-percent reduction in funding for environmental protection and he made very clear that what he wanted was a different allocation between the subcommittees so that we can, in fact, fulfill the commitment that all of us signed on to when we supported the last continuing resolution.

Despite all of the talk today by Members of the majority party about a balanced budget in 7 years, that talk reminds me of Ronald Reagan in the old movie ''King's Row.'' After Reagan woke up in the hospital, his legs had been amputated, and he said, where is the rest of me? My question is where is the rest of my colleagues? They are talking about the need for a balanced budget in 7 years, but they are forgetting that the other half of the deal was that Congress would agree that that balanced budget must protect future generations, it must ensure Medicare solvency, reform welfare and provide adequate funding for Medicaid, education, agriculture, national defense, veterans and the environment.

I do not know which dictionary my colleagues use most of the time, but I would doubt that anybody's dictionary would allow one to conclude that we have adequately protected the environment by cutting back by 22 percent the funding that we are providing in this bill for environmental protection.

Now, Members can say all they want about veterans health care, but the fact is that veterans health care is funded at a level $213 million below the amount in the original House bill, and that House bill was brought to us by the Republican majority; and yet they had $1,500,000,000 more to deal with in the conference than they had in the original House bill.

It just seems to me that on its face those numbers demonstrate that the majority party is not meeting the commitment it signed on to when it passed the continuing resolution. That is why the President is vetoing the bill and that is why he should have vetoed the bill.

Mr. LEWIS of California. Mr. Speaker, I have no additional requests for time and I reserve the right to close.

Mr. STOKES. Mr. Speaker, I yield 3 minutes to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Speaker, I thank our distinguished ranking member for giving me this time and for his leadership on the committee.

I rise today to talk about why we are where we are today. Many of my colleagues know by now that there are three bills in play, the balanced budget bill that we have been talking about for over a period of time, the continuing resolution, and the appropriations bill.

We also know that we would not be here today if we had come to agreement on our appropriations bill. That disagreement has necessitated a continuing resolution. Our Republican colleagues have tied the balanced budget bill to the continuing resolution, and that is why we are here. But if we had our work done, if we had come to agreement on the appropriations bill, there would be no need for a CR. We could debate the values of a balanced budget bill without the pressures of all of these other legislative tactics.

The distinguished gentleman from Louisiana, and I am sorry he is not here right now, the chairman of the Committee on Appropriations said in his colloquy with the distinguished chairman of the subcommittee, the gentleman from California [Mr. LEWIS], that the President did not agree with our budget because it does not agree with his values, whatever they are. Well, the gentleman is distinguished, and I know in the heat of the discussion sometimes an impression comes across that is less than distinguished, and I think that remark was. Because the President, and we all share the value of providing for our children's future, and the President has been very specific in terms of what his disagreement is and what his values are in this budget negotiation. That is to protect Medicare and Medicaid; that is to protect the environment; that is to protect education, the defense budget, veterans and agriculture. It has been said over and over and over again.

So, Mr. Speaker, I think the President has made very clear what his values are for our country and very clear what his values are in this negotiation. The environment is one of the important issues that the President values.

I want to reiterate what some of my colleagues have said and reference the President's veto message when he says that he vetoed the bill because the bill includes a 22-percent cut in requested funding for the Environmental Protection Agency, including a 25-percent cut in enforcement that would cripple EPA's efforts to enforce laws against polluters.

What this does is make it less safe for our children in terms of clean air and clean water. If there is one thing that parents cannot do for their children it is to control the environment around them, the physical environment around them. If there is one thing that Government can do, it is to enforce environmental laws. That is something we cannot do for ourselves. We can adopt good environmental habits and contribute to protecting the environment, but the polluters never stop polluting under the honor system. We must have a Federal role and a Federal participation to protect the environment.

So I thank the President for using the veto on this message. As we all know, veto means I forbid. I thank the President for forbidding this Congress to make the air less clean and the water less clean that our children have to breathe and drink.

Mr. STOKES. Mr. Speaker, I yield 2 minutes to the gentlewoman from New York [Mrs. LOWEY].

Mrs. LOWEY. Mr. Speaker, I thank the chairman for yielding me this time.

Mr. Speaker, I rise this evening in very strong support of the President's veto of the Republicans' devastating cuts in environmental protection and housing programs.

This bill is one of the more glaring indications of the extremist, anti-environmental policies of the Republican majority.

We should not be here having this debate. We should have funded the EPA, Housing and Veterans Program 2½ months ago. But the Republican leadership insists on adding extremist provisions, and I applaud the President for having the courage to reject them.

How anyone who is truly committed to ensuring clean water and clean air can, in good conscience, stand before the American people tonight and support this bill is more than I can fathom.

This bill is an attack on our natural resources and the environmental health and safety of the American people, plain and simple.

This bill cuts the Environmental Protection Agency by more than 20 percent, but that's only the tip of the iceberg: The Devil is in the details:

A 30-percent cut in loans to States that help keep raw sewage off our beaches and out of our rivers,

A 45-percent cut in funds that provide critical assistance to local communities to keep drinking water safe, a 20 percent cut in the program that cleans up hazardous waste sites, a complete termination of the EPA's authority to stop toxic dumping in wetlands and a 27-percent cut in EPA enforcement activities—that means the environmental cop will not be on the beat. So much for getting tough on crime.

In the area I represent, Federal loans are critical in helping clean up Long Island Sound and preserve the purity of the New York City water supply. And yet this bill cuts more than $750 million from these funds to the States.

There is no denying that these environmental rollbacks will cripple the EPA's ability to protect the quality of our air and water and because of their insistence on these extremist provisions, the Government is now shut down—less than 1 week before Christmas.

Mr. STOKES. Mr. Speaker, what is the time situation here?

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman from Ohio [Mr. STOKES] has 2 minutes and the gentleman from California [Mr. LEWIS] has 2 minutes and the right to close.

Mr. STOKES. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have heard from the other side allegations that the President is not interested in balancing the budget. The President clearly, in his veto message today, answered that. Here is what he said in his message.

He said:

> I am vetoing the bills not only because of the impact they have on the environment we leave our children, but also because of other things that they do that violate our values. They completely eliminate the National Service Program, which has been very successful, broadly supported by people across partisan lines in communities all across America. They cut innovative programs for economic development in our cities, the areas which have been left most untouched by the economic recovery of the last 3 years. They cut health care for veterans.

None of these things, the President says in his message, are necessary to balancing the budget.

Then, lastly, with reference to the whole question of medical care, I think it is important for us to listen to what the President said. He said the bill provides less than I requested for the medical care of this Nation's veterans. It includes significant restrictions on funding for the Secretary of Veterans Affairs that appear designed to impede him from carrying out his duties as an advocate for veterans. Further, the bill does not provide necessary funding for V.A. hospital construction.

Now, obviously, the President has addressed these things which he deems to be values which he, as the President of the United States, has a responsibility to carry out.

Finally, the President says this:

> This bill does not reflect the values that Americans hold dear, and I urge the Congress to send me an appropriations bill that has these important priorities that truly serve the American people.

That is the responsibility the President has to the American people. He has today exercised that responsibility. It is certainly incumbent upon the Congress to follow the direction given by the President of the United States.

Mr. LEWIS of California. Mr. Speaker, I yield the balance of our time to the gentleman from Texas [Mr. DELAY], our whip.

Mr. DELAY. Mr. Speaker, I thank the chairman of the committee and I commend the ranking member. He is, indeed, an honorable man and is trying to protect his values.

Mr. Speaker, the gentleman from Wisconsin, the distinguished ranking member of this committee, said he did not know what kind of dictionary we used. I would just challenge him to go look up the word ''truth.'' There is a lot of stuff going on around here that has a hard time meeting that definition in the dictionary.

The President is telling the American people that the Congress has shut down the Government and we have not done our work; that he wants to balance the budget, but because of his values he is having a hard time agreeing with Congress and what bills he is being sent. If the President was so concerned with the balanced budget or the Government shutting down, he should have signed the first balanced budget in 26 years. Twenty-six years. He vetoed it.

The President vetoed the Interior appropriations bill. The Interior Department hires 133,800 employees.

□ 1915

He could have opened up all the parks, all the monuments, by signing this bill.

He vetoes this bill that employs over 293,000 employees, and if we combine the two, that is 426,800 employees that could be going to work right now, being paid, and those offices would be open.

Mr. Speaker, we have done our work. We worked all year long putting these bills together and bringing them to the floor under the auspices of balancing the budget by the year 2002. But the President is like a procrastinating Christmas shopper. He has not thought about balancing the budget or these appropriations bills all year long, and here at the last minute, a week before Christmas, he decides he wants to be involved in the process.

We are at a crucial time in our history. On one hand, the President's values want to spend more money in Washington. On our side, we think we ought to empower the family, stop the credit card, and provide empowerment for the local and State government.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. LEWIS].

The motion was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEWIS of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the veto message of the President to the bill, H.R. 2099, and that I might include tabular and extraneous materials.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

FURTHER CONTINUING APPROPRIATIONS

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the Chair is constrained not to entertain the gentleman's request until it has been cleared by the bipartisan floor and committee leaderships.

Mr. OBEY. Mr. Speaker, I would urge the Chair and the majority leadership to do that.

GRANTING MEMBERS OF THE HOUSE PRIVILEGE TO EXTEND AND REVISE REMARKS IN CONGRESSIONAL RECORD FOR REMAINDER OF 104TH CONGRESS

Mr. BEREUTER. Mr. Speaker, I ask unanimous consent that for the remainder of the first session of the 104th Congress, all Members be permitted to extend their remarks and to include extraneous material in the section of the RECORD entitled ''Extensions of Remarks.''

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF HOUSE CONCURRENT RESOLUTION 122, REVISED CONGRESSIONAL BUDGET FOR FISCAL YEARS 1996, 1997, 1998, 1999, 2000, 2001, AND 2002

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 104–423) on the resolution (H. Res. 309) providing for consideration of the concurrent resolution (H. Con. Res. 122) setting forth a revised congressional budget for the United States Government for the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION EXPEDITING COMMENCEMENT OF COMMITTEE HEARINGS DURING REMAINDER OF FIRST SESSION OF 104TH CONGRESS

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 104–424) on the resolution (H. Res. 310) expediting the commencement of committee hearings during the remainder of the first session of the One Hundred Fouth Congress, which was referred to the House Calendar and ordered to be printed.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. RADANOVICH). Under the Speaker's announced policy of May 12, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. POSHARD] is recognized for 5 minutes.

[Mr. POSHARD addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington [Mr. METCALF] is recognized for 5 minutes.

[Mr. METCALF addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 5 minutes.

[Mrs. CLAYTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. CUNNINGHAM] is recognized for 5 minutes.

[Mr. CUNNINGHAM addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. OLVER] is recognized for 5 minutes.

[Mr. OLVER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

CLAIMING THE $1 MILLION OFFERED BY REPUBLICAN NATIONAL CONVENTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi [Mr. TAYLOR] is recognized for 5 minutes.

Mr. TAYLOR of Mississippi. Mr. Speaker, I take this opportunity to speak to the American people tonight to point out an inaccuracy, if not an outright deception, that has been printed in a number of newspapers around the country. We will give my fellow Mississippian, Haley Barbour, an opportunity to honor the pledge that he made to pay the first American who proves his statement false $1 million.

Mr. Speaker, that is this portion of the ad that was in the USA Today for a number of days. This particular ad was last Monday, December 12. It says, ''The Republican National Committee will present a cashier's check for $1 million to the first American who can prove the following statement is false.'' And then in quotations it says, ''November 1995, the U.S. House and Senate passed a balanced budget bill. It increases total spending on Medicaid by more than 50 percent from 1995 to the year 2002, pursuant to the Congressional Budget Office standards.''

While I do not doubt what Mr. Barbour had to say about Medicare and Medicaid, the spending really will go up. It is not the cut that many of my colleagues call it. It is just a limitation on growth. It is something that we as businesspeople have to do.

I will, however, take issue with the first part, that in November 1995 the House and Senate did not pass a balanced budget bill.

The budget that passed for fiscal year 1996, in October, contained a deficit, according to the Congressional Budget Office, of $270 billion for next year. Now, under the rules of the House, going all the way back to the earliest days of our republic, Congress can only allocate funds for 1 year at a time. So, although it was a 7-year plan, it means absolutely nothing. One Congress cannot commit another Congress to doing something or not doing something.

Mr. Speaker, those who follow Congress know, there has already been a 40-percent turnover just in the past 3 years, and over a 50-percent turnover in the membership of Congress in the past 6 years. So it is totally inaccurate for Mr. Barbour to say that we are going to commit future Congresses to reduce spending.

All this Congress can do is commit itself. And the budget that it has committed itself to has been certified by the Congressional Budget Office, as recently as December 14, to be $270 billion in deficit.

So, the much ballyhooed Balanced Budget Act of 1995 was a fake, a farce, a fraud, an insult to the people of this great country. As a matter of fact, even after certain members of the majority party called the Congressional Budget Office and requested that the CBO take a second look at their numbers, the number went from an annual operating deficit of $296 billion to an annual operating deficit of $270 billion, which is still a $7 billion increase over the annual operating deficit of this year.

Mr. Speaker, so tomorrow morning I will be walking over to the Republican National Headquarters and I will present the following information to Mr. Barbour. I will give him the opportunity to make good on his word. For those who do not know Mr. Barbour, he is a former citizen of the great city of Yazoo City, MS.

Yazoo City has several distinctions. First, one of the Confederate ironclads was built there in secret in the war of Northern Aggression, or the Civil War as the gentlewoman from California [Ms. PELOSI] might refer to it. That ironclad, the *Arkansas*, was responsible for lifting the siege of Vicksburg. Despite incredible odds against it, it actually ran off something like 65 Union ships in the summer of 1862.

More recently, the city of Yazoo City is famous for sending America's storytellers. One of the great storytellers is William Morris, a writer of renown throughout the country. More recently, a comedian by the name of Jerry Clower comes from Yazoo City. Tomorrow, we are going to give my good friend, Mr. Barbour, the opportunity to tell America whether he is a man of his word or a storyteller.

Mr. Speaker, I have used the resources of this office, and my congressional office, to help get this information. Therefore, it would be most inappropriate if I asked Mr. Barbour for

that money personally. I think it would be most appropriate if he made that check to the University of Southern Mississippi Development Fund. I will be over there tomorrow morning to collect.

THE PRESIDENT SHOULD BE HONEST ABOUT THE BUDGET, AND SECRETARY O'LEARY SHOULD RESIGN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas [Mr. TIAHRT] is recognized for 5 minutes.

Mr. TIAHRT. Mr. Speaker, there seems to be some confusion tonight about what is going on here in Washington. Let me clear up some of the confusion. What we are about is fulfilling the promise to balance the Federal budget and restore hope for this great Nation, because it is the right thing to do.

Let us for a moment set aside the fact that on November 19, the President signed into law that the Government would balance the budget in 7 years in CBO numbers in the first session of the 104th Congress. So far, the President has failed to keep his word and the public law.

Instead, let us look at the President's recent speech on Friday, December 15. In that speech the President attempted to mislead the people of America, I think, 13 different times. I just want to focus on 1 of those 13 different statements and explain why the President never would or could balance the budget without the honest help of Americans across this great land.

Let me quote from the President in his December 15 speech. ''You know, I do not agree with their very large tax cuts for wealthy Americans and for all the special interests that get their help in the bill.''

Mr. Speaker, we are trying to get a $500-per-child tax credit for every family in America. American families are of special interest to me and others, and I think it would help their pocketbooks. But I do not think most American families consider themselves wealthy.

But the irony of this is that the President does not want to give the average working family consideration, but he will allow members of his Cabinet to live lavish lifestyles at the expense of our working families.

Secretary O'Leary, whose responsibilities as Secretary of the Department of Energy have domestic responsibilities, but yet she has been overseas 16 times. She has leased the very same luxury jet liner that Madonna uses and these trips cost a minimum of a half a million dollars each.

She takes as many as 50 members of her staff and over 60 corporate CEO's and other corporate officers, many of whom have not covered their own expenses for these trips. But do not worry, because the American taxpayers will pick up the bill.

Secretary O'Leary is also mismanaging dollars to protect and enhance her image. Her image is very important to her. She employs 529 public relations employees at a cost of $25 million a year. She has a personal media consultant at a cost of $75,000 per year. She hires photographers and video crews to go with her on these international trips at taxpayers' expense to catch her looking at her best.

She even hired a private investigative firm to rate members of the press and Congress and develop a list of unfavorables so that she could ''work on them a little.''

But that is not the worst. The worst is that according to Vice President GORE in his National Performance Review, even the environmental management department of her Department is 40 percent inefficient. It is going to cost taxpayers $70 billion over the next 30 years.

Mr. Speaker, it will be impossible to balance the budget if the President cannot be honest about the budget and we cannot balance the budget if we do not get shed, as they say in Missouri, get shed of the arrogant and wasteful spending by the Secretary of the Department of Energy.

Secretary O'Leary should resign and the President should be honest about the budget. I believe the negotiations should be open to the public. Let us come to the table in front of the cameras and let everyone know which side is presenting which budget. I think that would enhance the process and we would, in fact, get a balanced budget in 7 years, scored by CBO numbers as the public law reads.

The SPEAKER pro tempore (Mr. RADANOVICH). Under a previous order of the House, the gentleman from New York [Mr. HINCHEY] is recognized for 5 minutes.

[Mr. HINCHEY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. SHADEGG] is recognized for 5 minutes.

[Mr. SHADEGG addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. HORN] is recognized for 5 minutes.

[Mr. HORN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. HOKE] is recognized for 5 minutes.

[Mr. HOKE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kentucky [Mr. LEWIS] is recognized for 5 minutes.

[Mr. LEWIS of Kentucky addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. KINGSTON] is recognized for 5 minutes.

[Mr. KINGSTON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

VOLLEYBALL NATIONAL CHAMPIONS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska [Mr. BEREUTER] is recognized for 5 minutes.

Mr. BEREUTER. Mr. Speaker, tonight this Member will address two very different subjects in the time available under this special order.

First, the subject of NCAA volleyball championship. Mr. Speaker, a year ago when the University of Nebraska Cornhusker women's volleyball team lost in the Regional finals, the team set a goal. The title on their media guide this season read ''One goal, one focus, one champion.''

All season the Huskers were determined to meet that one goal, keep that one focus, and be that one champion. This past Saturday in Amherst, MA, the Nebraska Cornhusker women's volleyball team ended a 32–1 season by capturing its first national championship.

The Huskers' victory is only the second time in the 15-year history of the NCAA volleyball tournament, that a team east of California has won the national title.

Since 1982 Husker volleyball teams have never lost more than six matches in a season, nor has any Husker team since that time fallen out of the American Volleyball Coaches Association top 25 poll.

And obviously their accomplishments continued this year. In his 19th season, Terry Pettit coached two Academic All-Americans, three first team All-Americans, and the National Co-Player of the year which is the award that is equivalent to the Heisman Trophy.

One goal. One focus. One champion. This Member and all Cornhusker fans are very proud of the accomplishments of these superior student-athletes. Congratulations to the Nebraska Cornhuskers—the 1995 Women's Volleyball National Champions.

VIETNAMESE BOAT PEOPLE: DON'T PROLONG THEIR SUFFERING

Mr. BEREUTER. Mr. Speaker, this Member has spoken previously about the plight of the 40,000 Vietnamese boat people languishing in refugee camps in Southeast Asia. This Member has described the damage wrought by

the ill-conceived Section 2104 of H.R. 1561, the American Overseas Interests Act, which was passed by the House of Representatives on May 24. This legislation has given these boat people, most of whom have been determined to be economic migrants rather than political refugees, false hope of resettlement in the United States directly from the camps. This false hope has led to rioting in refugee camps and has stopped a very successful program of voluntary repatriation under which more than 70,000 of these boat people have returned to Vietnam. The United Nations High Commissioner for Refugees and many objective observers lay the blame squarely on this legislation, the House passed provisions in the American Overseas Interests Act for outbreaks of violence in the camps and for the collapse of voluntary repatriation.

In an effort to break the current impasse the State Department is negotiating with Vietnam a program, called ''Track II,'' under which any boat people who volunteer to return to Vietnam will be entitled to an interview by the Immigration and Naturalization Service to determine once and for all if they qualify for refugee status under U.S. law. In this Member's opinion, the Track II proposal offers some hope of restarting the voluntary repatriation program, thereby decreasing the numbers of boat people languishing in the refugee camps and diminishing somewhat the pressure for massive involuntary returns which would lead to a humanitarian nightmare next year.

In a recent State Department briefing, we learned that the negotiations with Hanoi face some serious obstacles. I would urge my colleagues to lower the Congressional profile on this issue and allow the negotiations to run their course. Further action on the harmful legislative provisions contained in H.R. 1561 would only exacerbate the problems facing this program.

Mr. Speaker, finally this Member would insert into the RECORD an article from the November 29, 1995 edition of The Asian Wall Street Journal, entitled, ''Why Prolong the Boat People's Suffering?'' This article, written by Mr. Robert Van Leeuwen, the retired chief of the United Nations High Commissioner for Refugees (UNHCR) office in Hong Kong, makes a most convincing case that the biggest losers from the ill-conceived Section 2104 of H.R. 1561 are ''precisely those Vietnamese whose fate is the object of the proposed legislation.'' I commend this article to all my colleagues on both sides of Capitol Hill.

[From the Asian Wall Street Journal, Nov. 29, 1995]

WHY PROLONG THE BOAT PEOPLE'S SUFFERING?

(By Robert Van Leeuwen)

In June 1989, the United States and 50 other governments at the U.N.-sponsored International Conference on Indo-Chinese Refugees agreed on a Comprehensive Plan of Action (CPA) to provide humanitarian solutions for the continuing exodus from Vietnam. Six years later, CPA's achievements include tens of thousands of former ''boat people'' safely back in their country.

But legislation introduced in the U.S. Congress by Representatives Chris Smith and Ben Gilman pretends that history simply did not happen. Proposed last May, the legislation suggests that the last 40,000 Vietnamese in camps, all of them already determined not to be refugees, should now go through rescreening by an entirely different and far broader set of criteria to see whether they could be admitted to the United States as refugees.

In other words, the congressman would have us believe that hundreds of millions of dollars spent to implement the CPA, the continued provision of asylum in Southeast Asia, 75,000 persons determined not to be refugees safely back in Vietnam, 89,000 others resettled in third countries and a continuing flow of non-refugees back to Vietnam, was all in vain. That all this, achieved in a framework of internationally accepted humanitarian principles and standards, should be seen as null and void, and all the result of a biased and sinister design implemented by equally biased and sinister people.

This is clearly not credible.

But who pays the price of this ill-conceived initiative? Ironically, the biggest losers are precisely those Vietnamese whose fate is the object of the proposed legislation. Second in line are the U.S. taxpayers asked to subscribe to expenditures initially set at some $30 million, to settle in the U.S.A. some 20,000 Vietnamese already determined after elaborate evaluation of their stories not to be refugees. Then there are the returnees to Vietnam who would see thousands of those who chose to hold out in the camps suddenly and inexplicably rewarded by a new chance for a free ticket to the U.S.A. And after them, the still shadowy figures of those around the world who would be paying for an inevitable perception of lack of consistency and credibility in U.S. foreign policy.

Of course, no one ever doubted that implementation of the CPA would be difficult and controversial. For 14 years, following the collapse of the Republic of Vietnam in April 1975, hundreds of thousands of Vietnamese ''boat people'' had been given temporary asylum in Southeast Asian countries of arrival pending their permanent resettlement elsewhere. Since all were automatically considered eligible for resettlement, the momentum of the exodus was huge.

Then Hong Kong, inundated by arrivals from northern Vietnam, and in cognizance of changed realities in that country, imposed a cut-off date on June 15, 1988, after which eligibility for resettlement was no longer a given. Countries of the region followed suit. So it was that, a decade and a half after the end of the war, a young fisherman in northern Vietnam or those with older ambitions in the South could no longer hop along China's coast to Hong Kong with the assurance of finding there the gate to a permanent home in the West. Instead, they had to tell their story to government and United Nations High Commissioner for Refugees (UNHCR) officials charged with the task of determining by internationally accepted criteria and through elaborate and expensive procedures whether their inability or unwillingness to return to Vietnam was based on a well-founded fear of persecution.

Essential to the international consensus on the CPA was a clearly stated agreement on the fate of those determined not to be refugees: ''Persons determined not to be refugees should return to their country of origin in accordance with international practices. . . . In the first instance, every effort will be made to encourage the voluntary return of such persons.''

In 1988, the UNHCR signed crucial agreements with Vietnam and Hong Kong that guaranteed standards of treatment for new arrivals and for returnees to Vietnam, including full access by UNHCR staff to both categories of persons. And by 1992, difficulties notwithstanding, an honorable end to the long saga of the ''boat people'' was in sight. The stream of new arrivals had dried up. Voluntary returns to Vietnam from Hong Kong alone, temporary home to the largest number of Vietnamese in search of resettlement, averaged more than 1,000 a month in 1992 and 1993, and continued at almost 500 monthly throughout 1994.

Last May, though, immediately following press reports of the Smith-Gilman proposal, those figures for Hong Kong and the region as a whole dropped to an all-time low since 1989 of 156 returnees in September of this year. A similar precipitous drop in volunteers for repatriation was observed in the spring of 1991 just after published statements by Orange County Representative Bob Dornan and the then Vice President of the United States Dan Quayle holding out false hopes of resettlement for Vietnamese regardless of the necessary distinction between refugees from persecution and non-refugees in search of better economic prospects. People still in Vietnam took to the boats again and looked in vain for the U.S. aircraft carrier rumored to be waiting for them in the Tonkin Gulf. It never came, but arrivals in Hong Kong, down to 6,595 in 1990 from over 34,000 in 1989, soared to 20,206.

Today the search for refugees among the Vietnamese has been completed for some time. The number of new arrivals dropped to virtually zero in 1993. The future for the 40,000 non-refugees left in Southeast Asia's camps lies in return.

Over the six years of the CPA, those responsible worked under the most intense international scrutiny imaginable. No one hesitated to jump to the press with criticisms and allegations of human rights infractions, nor did the press, governments, private voluntary agencies and a colorful variety of individuals hesitate to dump these on UNHCR's doorstep. Inherently, no system of procedures for refugee status determination anywhere in the world can be perfect. Reasonable criticism and allegations based on fact helped to improve and strengthen a humanitarian framework for action designed to alleviate, not to prolong or deepen human suffering. No one, least of all UNHCR officials, stood to gain by ignoring them.

Unfortunately, reason, vision and recognition of the facts do not always have a louder voice than easily heard outcries of wrongdoing based on ideological convictions, emotion or narrow personal agendas. It is everyone's responsibility to see to it that the former, not the latter, prevail.

It is both quick and easy to make statements or propose legislation from positions of public trust. It may be far less so to live with the consequences. In the case of the Vietnamese that means with virtual certainty yet another prolongation of their dehumanizing stay in detention camps surrounded by endemic crime, the torn-up papers of vain hopes and children who have yet to see a world beyond barbed wire. That is the price they pay.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 5 minutes.

[Mr. DORNAN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

GOVERNMENT SHUTDOWN AND THE BUDGET

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentlewoman from Connecticut [Ms. DELAURO] is recognized for 60 minutes as the designee to the minority leader.

Ms. DELAURO. Mr. Speaker, I am delighted to be here tonight and join with several of my colleagues to talk about the budget agreement or the lack thereof and what the concerns and considerations are about a budget agreement in this body.

It will be the topic of conversation over the next several days. Not the prior speaker but the gentleman who spoke before the prior speaker made reference to the November 19 agreement that was agreed to by the President and the Congress in terms of a continuing resolution which would open the Federal Government that had been closed in those few days beforehand. The gentleman referenced this agreement, but what he did not do was to talk about the full scope of what this agreement was, a commitment to a balanced budget. I would like to read what the commitment included. It had a couple of parts to it.

My colleague intimated that the President had talked about a balanced budget in 7 years and that, in fact, that that was the scope and the sum total of this agreement and under the economic assumptions of the Congressional Budget Office and leaves the impression in the public's mind that the President has backed off of that agreement and has not been true to his word about the balanced budget and the economic assumptions.

It is not only the President who he intimates has reneged on this effort, but, in fact, the Congress and those of us in the Congress who, in fact, supported that agreement.

But the full scope of that agreement includes the following. It said that the President and the Congress shall enact legislation in the first session of the 104th Congress to achieve a balanced budget no later than fiscal year 2002, that is a 7-year period, as estimated by the Congressional Budget Office and the President and the Congress agree that the balanced budget must protect future generations, ensure Medicare solvency, reform welfare, and provide adequate funding for Medicaid, education, agriculture, national defense, veterans, and the environment. Further, the balanced budget will adopt tax polices to help working families and to stimulate future economic growth.

Part B, the balanced budget agreement shall be estimated by the Congressional Budget Office based on its most recent current economic and technical assumptions, following a thorough consultation and review with the Office of Management and Budget and other government and private experts.

My colleagues on the other side of the aisle would like the American public to believe that the agreement was only to a 7-year balanced budget and solely on the economic assumptions made by the Congressional Budget Office. It is a total reneging on the part of my Republican colleagues and the Republican majority in this body to, in fact, what that agreement was all about.

First and foremost, it was about ensuring the values and the priorities of this great Nation of ours and that has to do with Medicare and Medicaid and education and tax policy that is equitable to working middle-class families in this Nation. This agreement was signed and voted on by two parties and yet the only people who have been intransigent on this budget agreement and will not move off of $270 billion in cuts in Medicare and $163 billion in cuts in Medicaid is the Republican majority in this House of Representatives. Thank God, the President is holding firm on those priorities and the values of this great Nation of ours.

I will say to you that Members on both sides of the aisle feel passionately about their positions on the debate and we should feel passionately. We are debating the future of this country and the listening public should make no mistake. Sometimes you think that there is an argument, that we are bickering back and forth. I will just tell you, as this Member, and I know my colleagues feel the same way, these are issues that are worth fighting for.

If we are not fighting here for the values of this Nation and the priorities of the people of this country, then we do not deserve to represent those people who put their faith and thrust in us and asked us to come here on their behalf.

This debate is more than just about numbers. It is about those values. It is about those priorities of the American people.

Democrats and the President are opposed to the Republican budget plan because it makes deep and devastating cuts in Medicare, Medicaid, education and environmental protection, and we truly believe that those cuts go too far, too fast, and are going to hurt too many people in this country.

Let us talk about Medicaid for the moment. Medicaid is the Federal program that provides health care to tens of millions of needy children, of the disabled and the frail elderly in this country. Speaker GINGRICH's budget plan cuts Medicaid by 28 percent, $165 billion. At the same time it rolls out $245 billion in new tax breaks and loopholes to the wealthiest individuals and corporations in this country, to the richest corporations in this country. They will see a $17 billion windfall. And at the same time Medicare beneficiaries will see their deductibles go up, their copayments go up, and they will lose the choice of their doctor and many rural hospitals in this country will close down.

If you are a hard-working American listening tonight, you might think that the cuts in Medicaid do not affect you, that they only affect people on welfare and that it is just a program for the poor. Well, that is wrong, and it is a mistake. The changes in Medicaid proposed in the GOP budget would have a devastating impact on middle-class working families in this Nation. Do not take my word for it, Everyone is familiar with something called the Consumer Reports. It is a publication that tells you if you are getting a good deal or a bum deal when you go out to buy a new car or a computer or a refrigerator or some sort of an appliance in your home.

The group which publishes that famous report has taken a look at the Republican Medicaid plan from a consumers point of view and, guess what, they say it is a bum deal for America's working families. That is right, the Consumers Union has said, do not buy the Republican plan because it is a lemon. That is what it is.

The reports looks at the impact that the GOP Medicaid cuts would have on nursing home residents and their families. According to its findings, millions of American families would be impoverished by the Republican plan. Medicaid covers the cost of care for 60 percent of nursing home residents in this country, and it includes guarantees and insurance that families are not saddled with the financial burden of that care. But all of that is about to change if the Republicans get their way on this budget.

According to Consumers Union, families of nursing home residents can expect the following changes if the Republican budget is approved. First and foremost, and understand this, if you have a parent, if you have a loved one who is in a nursing home and the cost of nursing home care is about $38,000 a year these days, that in fact if this bill gets passed, if this budget goes through, ladies and gentleman who are listening out there, adult children may be held financially liable for the nursing home bills of their parents.

Second, family assets, including homes, may be sold or seized by Medicaid liens. Let me tell you that what it says in the fine print is that if you make above the median income in your State, your assets, as an adult child or a parent who is in a nursing home, can be tapped to pay for that nursing home care.

□ 1945

It was Ronald Reagan who wanted to protect adult children from having to be destitute in terms of having their funding taken away in terms of paying for health care and nursing home coverage for their families who put those laws into effect in this Nation. In the State of Connecticut, if you make more than $41,000 a year, the State can come after you to pay for the cost of your parents' nursing home care. Heed this well: Further, no one is guaranteed nursing home eligibility, no one. States may set unreasonably low income levels so that thousands of people

will be denied help in paying the high cost of nursing home care. Families may be forced to spend their life savings for long-term care of a loved one.

Speaker GINGRICH has put together a budget that reflects his priorities, not America's priorities. It is a budget that will hurt those who would need our help when helping those who are doing just fine. Over and over again the budget socks it to working families while cushioning the blow for the wealthy. Balancing the budget is an important goal, but balancing the budget has to be not about just balancing the books. It has to be about what balancing what our priorities are about.

I am going to stop at this juncture for my colleagues who are on the floor, and I want to open up the discussion to them, and we can make the continued points, and I am happy to yield to and to recognize my colleague, the gentleman from New Jersey [Mr. PALLONE], who has spent endless hours on the floor of this House, and in meetings, and in his own district to try to truly educate the public on what is in this bill which is so hurtful to people in this Nation and particularly takes away health care, that security and that safety net of health care in this country. I am happy to yield to my friend from New Jersey.

Mr. PALLONE. I want to thank the gentlewoman from Connecticut [Ms. DELAURO], and I certainly want to follow up on some of the comments that she made.

Mr. Speaker, I want to follow up on what the gentlewoman from Connecticut said, particularly when she started out in the beginning and she read from the concurrent resolution that was adopted a few weeks ago, just before Thanksgiving, that set forth the basis for the negotiations over the budget. That is the continuing resolution which, of course, expired Friday. I wanted to, again in following up on what she said, I wanted to make a couple of points:

First of all, I think everyone has to understand that there were three parts, at least three parts, to that continuing resolution that everyone agreed on. One was that while we negotiated the budget between the White House and the Congress, between the Democrats and the Republicans, that the Government was not going to shut down, that the Government was going to continue to operate, and on Friday, when the Republican leadership walked out of a meeting with the President, whereupon they were continuing to negotiate the budget, and when the Republicans leadership in this Congress refused to bring up a continuing resolution Friday, Saturday, Sunday, or even today during a normal business day so that the Government continues to operate, they broke the commitment that was made a few weeks ago that the Government would continue to operate while we worked out our differences over the budget, and I think it is particularly tragic that we went through another business day today with close to 300,000 Federal employees going home. Remember these people are going to be paid, they are not working, and the Government and the people that are serviced by the agencies that are closed down lose out. And I made the point over and over on the floor of this House that we need to put our ideological differences aside and let the Government continue to operate while we negotiate this budget.

Now, as my colleagues know, I do not even know if it was mentioned today during the short debate we had on this joint resolution that the gentlewoman mentioned, but you have to understand that Social Security offices are closed, that the national parks, the national recreation areas, the national monuments are closed not only in Washington, DC, but throughout the country. People who depend on Government agencies for certain services which their tax dollars are being used for cannot obtain those services. It makes absolutely no sense for any of that to occur while we continue to argue over and negotiate the budget.

That was No. 1.

The other part of the resolution that the gentlewoman mentioned was the fact that the priorities, the priorities whether they are Medicaid, Medicare, the environment, education, and the other things that were mentioned in that continuing resolution, this agreement that was reached a couple weeks ago, they have been completely ignored by the Republican leadership. In fact, in the joint resolution that was brought up today, which most of us voted on, including myself, that resolution made no reference to the Government shutdown or the need to continue the operation of Government, no reference to the priorities such as Medicare and Medicaid, and simply said that negotiations should continue based on the most recent technical and economic assumptions of the Congressional Budget Office. Well, we already understood that we already agreed that we were going to operate with a 7-year budget essentially based on CBO numbers. We did not need to argue or debate that today.

Mr. Speaker, the problem is that the Republican leadership has refused to come up with a resolution to let the Government continue to operate so that everybody goes home and gets paid anyway, and they refuse to talk about the Medicare and Medicaid and the other priorities, so, you know, this agreement that was reached, as the gentlewoman from Connecticut said a couple weeks ago, this agreement has—the other part of the bargain here, to keep the Government open and to deal with the priorities such as Medicare and Medicaid are basically out the window. I think that is very unfortunate because I think that the President—it is abundantly clear that the President has used the time over the last 2 weeks to set forth a budget wherein he preserved those priorities, and basically on Friday, when the Republicans walked out of the negotiations session, he came back and said, ''Look, I can't make the level of cuts in Medicare and Medicaid that the Republicans are asking me to make and still preserve the programs,'' and they made a commitment, the Republicans, that they would provide adequate funding for Medicaid, insure Medicare solvency, and work for sufficient funding for the environment and other priorities. They have broken that commitment, and I just wanted to talk about one aspect of this, and then I am going to yield to the gentlewoman from California [Ms. PELOSI].

Earlier today the President—earlier this evening I should say—the President vetoed the VA, HUD and Independent Agencies Appropriations Act which includes the Environmental Protection Agency, and most of the programs that protect the environment and most of the funding for the programs that protect the environment, particularly the EPA, and the President again articulated his priorities. He noted in his veto message that the bill includes a 22-percent cut in requested funding for the Environmental Protection Agency, including a 25-percent cut in enforcement that would cripple EPA efforts to enforce laws against polluters. Particularly objectionable are the bill's 25-percent cut in Superfund, which would continue to expose hundreds of thousands of citizens to dangerous chemicals and would hamper efforts to train workers in hazardous waste cleanup.

Now my Republican colleagues, the chairman of the Committee on Appropriations, the chairman of the subcommittee that brought this bill up, when they got on the floor, they responded to the President's veto by saying, well, the President has not come up with a 7-year balanced budget; where is the balanced budget? Again, neglecting the priorities.

Here is one of the major concerns that the President has. Why is it that the EPA, and the environmental protection programs in general, take the biggest cuts of any Federal agency or any Federal programs and basically their whole enforcement program is crippled? Well, the reason is very simple, and that is because the Republican priorities are neglecting the environment in the same way that they are neglecting Medicaid and they are neglecting Medicare. They have basically hoisted up the notion that we have to have a 7-year balanced budget, and it does not matter how it is balanced, it does not matter where the priorities are. Well, I should say maybe even go further and say that the priorities, as they have always have been in this whole budget negotiation, give the tax breaks to the wealthy, give the tax breaks to the corporations, and take the money away from Medicare, Medicaid, as well as the environment.

The President today, as he has for the last 2 or 3 weeks, indicated what

his priorities are. He indicated his priorities on the environment today very clearly in his veto message, and I think that the main thing that we have to do over the next few weeks, as these budget negotiations continue, is hold the Republican leadership's feet to the fire and say, ''Look, we're all in agreement with a balanced budget, we will even go along with your 7-year plan and your CBO numbers, but we've got to protect our priorities,'' and I have not seen any effort at all over the last few weeks on the part of the Republican leadership to protect those priorities that we have articulated and that were very well articulated in the agreement a couple weeks ago.

Ms. DELAURO. I just want to make one point and then yield to our colleague, the gentlewoman from California [Ms. PELOSI]. The point that you have made is that there truly is nothing balanced about rolling back environmental protection in order to, at the behest of corporate polluters, which is what has happened in this portion of the budget, is those people who—will want to continue polluting, have had the opportunity, in fact the most egregious points about this effort is that they have the opportunity to help to draft the legislation in this body, and we are rolling back those environmental protections for the aggrandizement of these special interests which is an integral part of this budget.

One of the last pieces I wanted to mention is that we have in this tax break package rolled back the alternate minimum tax. For instance, you are going to cut student loans that allow working families, middle-class families to get their kids to school. We all went to school with student loans. They are going to try to cut out these programs and at the same time do away with the alternate minimum tax. That is the tax that again was put in by Ronald Reagan to have the richest corporations in this country pay their fair share of some taxes at a 20-percent level. Nobody was asking for that repeal. This is being repealed, and they are telling us at the same time that we have got to bring our fiscal house in order, we are going to give this—you know millions of dollars of windfall to the richest Americans, and at the same time we are telling working families we are sorry we have got to cut back on the student loan, your kid cannot go to school, and you are going to have to figure out another way to do it, or a veteran in this with, you know, sorry we are going to cut $6 billion of veterans' benefits, but we are going to give all these billions of dollars to these folks who at this time do not need it. It is truly mind-boggling to think about what this says about the priorities of this Nation.

I now would like to yield to my colleague, the gentlewoman from California [Ms. PELOSI], who has really been fighting the fight on this issue in talking about how all of this affects her constituents in the State of California.

Ms. PELOSI. I thank the gentlewoman from Connecticut for yielding, and for her leadership, and her persistence and her relentlessness on presenting this issue to the American people, and to my colleague, the gentleman from New Jersey [Mr. PALLONE], for his leadership as well.

It is very clear listening to the two of you and to our other colleagues who have been making this fight to protect Medicare, and Medicaid, and student loans, and school nutritional programs for young children, et cetera, that what this fight is about here in Washington, DC, is not about politics, it is about philosophy and values and priorities.

□ 2000

When we talk about balancing the budget, you have heard it a million times, the budget should be balanced in its values as well as fiscally balanced in terms of taking in and spending the same amount of money. That is why it is so very hard if you call a balanced budget your driving issue, why you can in the same breath talk about a tax cut of a quarter of a trillion dollars for the wealthiest people in our country.

How can it be a statement of our national values, as our budget should be, for us to talk about cutting back on what our colleagues mentioned here, Medicare, Medicaid, student loans, school nutritional programs, et cetera, while we are giving a tax break at the high end?

Our colleagues on the Republican side in this session, in this budget, make the folks who talked about trickle-down look good. Trickle-down never worked, but at least it gave some recognition that somewhere, somewhere along the line, there should be something for folks at the bottom of the economic scale. Their view was if you give it all to the top, create wealth at the top, the benefits will trickle down.

Our colleagues now in this budget, in this Congress, do not even care if it trickless down. ''If you are at the low end, if you are poor, if you have not had the same opportunities as others, you are not going to get them. So be it.''

In our Labor-HHS we cut, or the Republican leadership cut, $1 billion out of aid to disadvantaged children, the Chapter I education appropriation, $1 billion. That is 1 million children in our country who will not get the kind of assistance they need early on in their education to help them fulfill themselves and make a valuable contribution to their society, as well as become taxpayers.

I am very interested in showing what our colleagues spelled out in terms of the cuts and the values and the unfairness of the tax cut while we are, in many cases, increasing the taxes for people who make $30,000 or less, and we remove the earned income tax credit for families, too. Some people are making the minimum wage. If two wage-earners in a family are working at the minimum wage, full time, they bring home the rip-roaring sum of $17,000, and they will get a tax increase, because they will not, unless they have children, they will not receive the earned income tax credit. These young couples are preparing to have children, they are saving up to have children, and our colleagues are increasing their taxes, while giving the preponderance of this tax cut to the high end.

I want to show once again what this means to California. Last week when we had our special order, I talked more specifically about what it meant to San Francisco. I do this because I think each of us, and I was pleased to be invited by my colleagues to do this last week and now, because we represent our districts here and are members of a delegation from a State, and we should all evaluate what it means to the people in our districts and our State, the budgets of our local communities and our State budgets, and the economies of our region.

I am proud to be part of the California delegation in the Congress. My district is San Francisco, 80 percent of the city of San Francisco. I share representation with the gentleman from California [Mr. LANTOS]. This budget plan that the Republicans are proposing has a devastating impact on the State of California.

First, let me tell you what California brings to the country. In terms of the balance of payments, in terms of trade, this dynamic, incredibly resourceful State of California has, and we can go top to bottom with many of these issues, and some of them are throughout, has contributed enormously to our exports, and therefore our balance of payments, and therefore to our national treasury in terms of high tech, biotech, agriculture, entertainment. This list goes on and on. There is tourism. Many people, of course, come from all over the world to visit California, so dollars from all over the world flow into our State. We have invested in our people. Our country, when our country invests in its people, we reap the benefit.

Our particular State has been a very dynamic one, very resourceful in terms of when we have a setback, we can bounce back because of the deiversity of the economy in our State. We are taking a beating on the base closures and the cutbacks in defense spending, and that is appropriate as we wind down after the cold war, but that means that we also have to recognize that there are needs that we have in our State.

Under this Republican balanced budget, the State of California, in the 7 years of the budget, will lose over $72 billion just in the reconcilitation part of the bill, not including the appropriations, so it will be closer to $100 billion in the 7 years.

Just to put it in perspective, our State budget in California is approximately $57 billion a year, so it will be nearly 2 years in the next 7 years of a State budget which will be removed

from California in terms of assistance to individuals, Medicare and Medicaid, student loans, et cetera, school nutritional programs, in terms of the cutbacks for localities and to the State budget. What that does to the economy of the State also has an impact on what happens nationally, because California is one-eighth of the country.

I encourage my colleagues to look to your own States and districts to see what this really translates for you. Is it dynamic? Does it contribute to your people becoming more prosperous, and therefore paying more taxes, producing more revenues, enriching their lives, building a better future for our country, or does it have the opposite effect?

Unfortunately for California, the impact of this budget is devastating, and one that we simply cannot absorb without severe economic setback for us in our State. When we hear people talk about this balanced budget, you have to say why are we here at this point, one week before Christmas, when we would all much rather be working in our districts with our constituents or spending time with our family, or preparing for a religious holiday? Instead, we are here. Why are we here? Because we have not finished our business.

Every year the Congress must pass 13 appropriations bills. We have not done that. On top of it, the ones that we have done are so out of balance in terms of the values of the American people, the President could not possibly sign them. And three cheers for President Clinton for vetoing most recently the VA-HUD bill and the Interior appropriation bills, because if there is one thing that we all agree on in this country, it is that we want our children to breathe clean air and drink clean water and eat food that is not contaminated by pesticides.

This antipollution insistence of the President is one in which I strongly support him. We all have to, too, because if there is one thing that is beyond all of us, as much as we want the best for our children, we cannot control the atmosphere and the water that comes out of the tap in our homes; or if we go to the market and we want to buy meat, we want to know that it is inspected, and what we bring into our homes, to our families, is safe. Government plays a role in that. I thank the President for vetoing.

I remind you, veto means ''I forbid.'' I thank the President for forbidding these huge cuts in EPA, which protects the water and air our children drink and breathe. I thank the President for vetoing the Interior bill, which does damage to our environment. Hopefully our colleagues on this side of the aisle, the Republican colleagues, will see the light and come to terms with the President on these bills.

When we have agreement on this appropriations bills, there will be no need for a continuing resolution, and we can debate the priorities of our budget in the appropriate time frame. Remember, when we talk about a balanced budget and we throw in a quarter of a trillion dollar tax cut, overwhelmingly at the high end for the wealthiest individuals of our country, you are, de facto, imposing severe hardship on children and senior citizens in our country.

One other point, in closing, that I would like to make. In the Los Angeles Times—yes, we San Franciscans read the Los Angeles Times, too—there is an article today which I will submit for the RECORD, and it is called ''Offspring May Pay Medicaid Tab.'' ''GOP plan to balance budget would let States require adult children of nursing home residents to contribute to cost of parents' care.''

Mr. Speaker, I have already addressed this at length, but this article does so, too. From the National Senior Citizens Law Center, Patricia Nemore says, ''This is hitting families when they have their children's education and their own retirement to save for.''

As my colleague, the gentlewoman from Connecticut, said, if you are above the median income level your assets will be called upon to pay for your parents' nursing home care if they are on Medicaid. This is after families have paid down so many of their resources already, and that is why they are on Medicaid and in the nursing home. This is when families in middle age, middle-income families, are raising their own children and sending them to college.

This is at a point where you use an arbitrary figure, like median income. Certainly there are people in our country who can afford to do this, but using an arbitrary figures like median income, and to say that that is a burden that the States may now put on families, I think contributes enormously to the economic as well as the health security of America's families.

Mr. Speaker, at this magnificent time of the year, when we should be heeding the words of Matthew in the Bible and feeding the hungry and giving shelter to the homeless, et cetera, as the Bible called for, and as the gatekeeper in heaven said, ''When you did this for the least,'' and I would rather say, ''the poorest of our brethren, you did it for me,'' when we do that, certainly we honor acts of charity, we honor the God who made us, we honor our creation. But these people should not have to be dependent on the largesse of individuals. We must have public policy that recognizes that the way we are going to have a strong country is to invest in our people, to give them education and opportunity, and to understand that they cannot be exposed from a health or economic standpoint in the ways that this so-called balanced budget proposal of our colleague proposes.

I am so pleased that President Clinton had the courage, in the face of all that has happened, the close down of government, to say ''No, I forbid,'' to these proposals that the Republicans are making on the appropriations bills. When they come to the reality that the public will not accept those false priorities on the Republican side and the President is proposing what is good for America's future, only then will these bills be passed. There will be no need for a continuing resolution anymore, they will be passed and signed by the President, eliminating the need for the CR and taking us to a place where we can truly produce a balanced budget, balanced in money, balanced in values, balanced in priorities.

Once again, I want to thank our colleagues for calling this special order and their ongoing leadership on this issue, and call again to my colleagues' attention the impact on our State. See what it does to yours.

Ms. DELAURO. Mr. Speaker, I want to thank our colleague from California for reiterating the effect on adult children, and how their assets are at risk if they have a family member who is in a nursing home. One other point in terms of continued education, a number of our colleagues this afternoon, Republican colleagues, talked about how the President has been derelict in his duty and at this last hour is vetoing these appropriation bills.

I say to my Republican colleagues, you cannot talk out of both sides of your mouths. You cannot be in charge of this institution, hold the majority on all of the committees, and in the final votes in committee and on the floor of the House, and when you get to the appropriations bills, when you cannot get them completed in the House and in the Senate and send them to the President, that has been the single biggest issue in holding back what has been going on here in terms of getting to the budget, is they have not done their job on any of these appropriations bills. I thank the gentlewoman for bringing that point out.

Ms. PELOSI. If the gentlewoman will yield, I just want to make one further point in that regard. Yes, if this House had done its work on time, September 30, midnight, had the bills to the President, we would not be here now. Certainly in years gone by, there have been times when appropriations bills have not been passed on time and we have had a need for a CR, but to this extent it has not been seen before.

I want to make the further point that if we had not spent the first half of the year on the Contract With America, which had no prospect for Presidential signature, and only one bill, I think of which has even been signed into law, fine, if you have an agenda you want to bring to Congress; but make sure you do the work the public has sent you there to do, too, and that is to pass the appropriations bills, to debate the priorities, pass the bills so Government can function.

Ms. DELAURO. Mr. Speaker, I yield to the gentleman from Washington, JIM MCDERMOTT. In terms of the Medicare issue, the gentleman from Washington has really led the way in terms of heeding what the trustees said in terms of solvency, and $90 billion to be

able to deal with that issue, because none of us view that there are not changes that could be made in the Medicare Program, but the gentleman has had the foresight to think about the future and what happens with baby boomers and setting up a structure to deal with that, and not sending the balance of that $90 billion from the $280 that the Republicans want to cut from Medicare for their tax cuts for the wealthy, but has been someone who has worked diligently on trying to deal with the Medicare issue. I am proud to yield to my colleague, the gentleman from Washington.

Mr. MCDERMOTT. Mr. Speaker, I thank the gentlewoman. I want to commend my colleague, the gentlewoman from Connecticut, for having this special order, because at time like this, it is confusing. Many Members wonder if anybody is paying any attention whatsoever to what the real issues are. As I walked into the Chamber a moment ago, my colleague, the gentlewoman from California [Ms. PELOSI], put her finger on what the real question here is. We are arguing about philosophy.

□ 2015

Now, people can get confused. I went home to Seattle this week, and it is always good to go home and talk to people in your district, and I talked to my mother and father. My father is 90, my mother is 86, and their questions were, what is this all about? What is it all about? Why is all this fighting going on? Why do you not just resolve it and get it over with and come on home?

The question is one of philosophy. I personally, like Ms. PELOSI, take my hat off to the President for standing up for a philosophy that says that people are entitled to health care.

Now, that is at the root of it. You can have all of this argument about CBO figures and whether this is honest scorekeeping or whatever; all it does is confuse people. But if they would simply remember that the issue here is whether people are going to wind up at the end of this session with entitlements to health care in this country, they would understand what the President has put his foot down on and will not move; and I hope he does not move off of that.

Mr. Speaker, the programs Medicare and Medicaid get all mixed up in people's minds. The names sound sort of the same, so people confuse them, even when they talk about them. Medicare is basically a program of providing health care for senior citizens and disabled people in this country, and Medicaid is another program. Medicare is all funded by the Federal Government. Medicaid is half State and half Federal Government, and it deals with poor women and children, and with senior citizens; and two-thirds of the money in Medicaid goes to pay for nursing homes.

There is another program in Medicaid which people know very little about called the QMB Program; that is, Qualified Medicare Beneficiary. That means if you are a poor senior citizen, you do not have very much money—you have to remember that there are 9 million widows in this country living on less than $8,000 a year; now, that is just getting by. If they do not have the money to pay for deductibles and copays, the QMB Program of Medicaid pays for their part of the health care plan.

Mr. Speaker, it is the Republicans' intention to take away the entitlement for both Medicaid and Medicare from all Americans. That is their long-term goal. Speaker GINGRICH has said that he does not want to do it now because he knows that politically it is not acceptable, but they want it to kind of wither away and die on the vine. They are simply after that program.

To understand what is going on in Medicare, and I do this because I wound up explaining to my parents, right now Medicare is a program of guaranteed benefits; no matter who you are in this country, no matter what color you are, how much money you have, no matter where you live, no matter what, if you are 65, you are in the Medicare Program and you are entitled to a guaranteed set of benefits.

Now, the Republicans say, look, we do not want to guarantee anybody any benefits. We will guarantee a fixed contribution. We are going to give them a certain amount of money. You could call it a voucher. They are going to give $4,600 to every senior citizen next year and say, you take your little $4,600 out there and buy a benefit package like you have now, and next year we will give you $4,900, and the next year we will give you $5,200. That is why they can say we are putting more money in.

However, the fact is that the second year, that $4,900 will not buy the guaranteed benefit package you have today. So your benefit package is going to shrink, and each year it is going to shrink until you do not have, in the year 2002, what you have presently in that guaranteed benefit package. The guarantee of benefits is gone. All they are going to do is send you the voucher and send you out into the street.

Mr. Speaker, I look at my parents, and I think every American ought to look at their parents, if you are in my age range. I am 58, so from 58 down to about 35, you ought to look at your parents and say to yourself, how will it be when my mom and dad go out in the street with that voucher in their hand looking for a friendly insurance company to take care of them?

My dad is 90. Now, you just tell me which insurance company in this country wants to have my father as one of their beneficiaries? I mean, he has had a heart attack, he has had a stroke, he has had a whole bunch of things. He is doing just fine right now, but nobody is going to bet on him.

Mr. Speaker, that is what they are doing to senior citizens in this country. They are taking away the guarantee that he will be covered and say, ''Mr. McDermott, take your money out there and see if you can find anybody who wants to take care of you.''

Now, I would not have come over here, because I was sitting over in my office reading letters, and a lot of people think it does not do any good to write a letter to their Congressman. I am here to tell you that everybody ought to be writing to their Congressman or Congresswoman and telling them what they think about this whole idea, because I read a letter which was sent out, this was in California, and somebody through that I ought to read this, and I will read it to you because it tells you what senior citizens are sitting there facing.

''Dear non-HMO Medicare patient,'' that means a patient, a senior citizen who does not belong to an HMO, ''As of December 31, 1995, the San Jose Medical Group will no longer provide care to non-HMO Medicare patients and, as such, I will no longer be able to provide your care. Non-HMO Medicare reimburses our doctors at rates so low that the San Jose Medical Group cannot cover costs. I am writing to you now because I wish to continue to provide care to you and would like to inform you about the senior HMO Medicare plans which are available to you. I can continue to serve you when you enroll in one of those senior HMO plans listed below. Should you wish to locate another physician who accepts non-HMO Medicare patients, you can call,'' and they give a number here.

Mr. Speaker, they go on. I mean, they are selling HMO's. This is a doctors' group shoving people into HMO's. ''Selecting a senior HMO plan is an option you have under your Medicare health benefits. With a senior HMO, you no longer need to buy Medicare supplements. This saves some of our patients thousands of dollars a year. HMO's have no annual deductible, but you do have to pay $5 or $6 for each office visit. These plans cover everything that Medicare allows and most add in extras like eyeglass benefits, physical exams and prescription drug coverages. Some plans even cover hearing aids, mental, and dental care.

''Now, what is the downside? Well, you do need to select a primary care doctor from whom you must get a referral to see a specialist.'' Think about what that means to older people. Most of them have things wrong with them. I mean when you get to be 70, 80 years old, you have something wrong with you, and you are not going just to see the GP, you are going to see somebody dealing with your diabetes or with your lung problems, or you will see your cardiologist or something special.

Before you can see that specialist, you have to have this primary care doctor who must give you a referral. Why? You already know Dr. Johnson takes care of your heart, why can you not just go to him? Why do you have to go to Dr. Thomas and get Dr. Thomas

to refer you to Dr. Johnson? It is crazy. It is simply adding cost over, being used to keep the senior citizen from getting the referral to the specialist.

Now, this is what is going on, and I always say, with all due respect to my California colleagues, in Washington State we always say, go down to Los Angeles an watch what is happening, because it is going to be in the whole United States in the next 3 years; whether it is Hula-Hoops or music or clothing or whatever, it all starts there.

Well, they are starting with the letters now, sending them out in California, and they are going to be sending them out to every senior citizen in this country. You have to ask yourself, why does the doctor put down the name of six HMO's? I will tell you why he does, because I am a physician. He belongs to those. I will bet you he belongs to them. What he did when he signed in, they said to him, now you have to bring your practice in here, otherwise we are not going to need you. So this doctor is writing to all of these senior citizens saying, please join these HMO's, because if you do not join, they are going to kick me out. That is how the HMO's operate; if there are no patients, they throw the doctors out. So the doctors are in the business of urging people to get into HMO's.

The President has said, I want to protect people's right to choose their own physician, not have to join an HMO if they do not want to, not be forced, either ecomonically or by an subtle pressure from the doctors, even; I want people to have the right to choose whoever they want.

Now, at the end of what the gentlewoman from California [Ms. PELOSI] talked about, she also brought up an issue which I think, I have said to senior citizens groups all over my district and I think everybody ought to be thinking about it, they asked me, what can we do about this? I said, tell your children, because most of the people under 65 in this country think, well, this has nothing to do with me, this is Medicare, that is for old people; or Medicaid, that is for poor people. I am not poor. But the fact is that Medicaid takes the burden and Medicare takes the burden of health care off people like me.

Mr. Speaker, most people my age and a little bit younger are struggling to help their kids get through college, so they are busy paying college tuitions, and they have never in my lifetime, in my adult lifetime, no one has ever had to think about paying their parents' health care bills. It simply was off the table.

That is what Medicare did in 1965 and Medicaid. When President Johnson signed those bills, he lifted the burden off individuals and said, as a country, we are going to take care of everybody. Nobody is going to be stuck with their particular problems; we are going to share the burden.

What this Congress, what the Republicans are doing is trying to put it back on people and say, well, if you are lucky and your parents died young, or if your parents are healthy or whatever, you get off. However, if your parents are sick, you are going to get stuck, because as they take away that guaranteed benefit package in Medicare and your parents are out there with that voucher that does not buy what they have today, they are not going to have it and you are going to say, well, mom, why are you not going to see the doctor?

Well, I did not have the money; I could not afford it. So people like me and younger than me are going to be stuck saying to their parents, you go see the doctor; here is the money. So while they are paying for tuition for their kids, they are also going to be paying for their parents' health care.

The real impact, though, is if your parents, and our health care system has worked so well that people live and live and live and we have lots of people 80 and 90 years old in this country who ultimately wind up for some period of time in nursing homes. Now, if you have to go and live in a nursing home, the cost is $30,000 a year at a minimum. And if you take the Medicaid Program, as the Republicans are intending to do, and throw it back to the State legislatures, there is going to be a fight in 50 State legislatures about how you pay for Medicaid and how you pay for nursing homes.

A very easy thing for Members of a State legislature to do is to say, well, why do we not get some money out of the children of the old people and that will be a way that we can reduce our costs for nursing homes in this State. So they are going to pass laws in the 50 States saying that the parents, or the children, if they are at whatever level of income, have to pay $1,000 or $2,000, or who knows what they will decide, because if the States are short, like they are in the State of Washington, there is no extra money.

We passed a tax initiative that says, they cannot raise taxes except with a two-thirds vote. The Republicans put a phony rule in here that you had to have a two-thirds vote to raise taxes, but every time it comes up out here, they waive the rule. In our State, it is law. So the State legislature cannot come up with additional money, and if the Feds do not send down the Medicaid money, the State legislature is going to start looking for somebody else to pay the bills for their senior citizens, and they are going to look to the children.

It is going to happen. People are going to wake up here in about a year or two and say, where did this come from? How did it happen? It happened right now in December 1995, and the only one preventing that from happening is the President of the United States who continues to veto this kind of legislation. The chaos that is being wreaked through the health care system is on every level, and the President is the only one at this point who is holding firm, and he is really protecting the American people and their health security net, health safety security net in this country.

□ 2030

I think that what you are doing here tonight by giving people a chance, and Members of Congress to come and tell what is happening, is a way of educating people about what the real issue here is.

It is not about whether the CBO numbers are better than the OMB numbers and all that kind of gobbledygook that I hear out here. It is about whether or not people in this country are going to have the entitlement to have health care at a level that they have come to expect in this country. We have been able to do it in the past and it is certainly not out of our reach now. I commend the gentlewoman for having this special order.

Ms. DELAURO. I want to thank my colleague for helping in terms of public education and for focusing on this and what it is, and that is values and what the values are in this country as they are not reflected in the Republican budget.

I yield the balance of our time, we have about 5 minutes left, to my colleague the gentlewoman from New York [Mrs. LOWEY].

Mrs. LOWEY. I thank my colleague, the gentlewoman from Connecticut [Ms. DELAURO], for organizing this special order, and thank the gentleman from Washington [Mr. MCDERMOTT] for coming down and talking to us about Medicare and Medicaid. I, too, was sitting in my office when I heard the gentleman from Washington [Mr. MCDERMOTT] talking.

There is a lot of confusion out there. People are wondering what this alphabet soup is all about. OMB, CBO. Frankly, we know that it is hard enough to predict what the budget is going to be next year. It is hard enough to predict what economic conditions are going to be next year.

For the Republicans to tell the President that his numbers are not right because they differ 7 years from now does not make sense at all. So what really counts is that the President is standing firm and saying, ''I will balance the budget in 7 years but I have got to protect Medicare, Medicaid, the environment and education.''

Really I think the public is a little bit fed up at this point and would like us to get together, come to some conclusion. I was at the Statue of Liberty this morning, frankly, and to see the Statue of Liberty closed because the Republicans are saying do not use these numbers, do not use those numbers, use these numbers. The public really wants to know why the Social Security offices are closed, why the Statue of Liberty is closed, why they cannot get their passport.

I would suggest that while we are debating these very serious issues, we get a continuing resolution and get the

Government going again, because it is unfair to penalize the people for what is going on here in this House of Representatives. So we should be adults, get the Government going, and then continue to debate these very serious issues.

Frankly, I want to applaud the President again for standing firm. Medicare, Medicaid, education and the environment are issues that are worth us standing firm on.

Frankly, I was in my office looking through my mail, and rather than talk in generalities, I was looking at a letter from a constituent of mine by the name of Lorie Kraft. She is from Forest Hills, NY. She has a 79-year-old mother, Rena Payne. Like many children, Lorie is her mother's primary caretaker.

You were talking about your father. Her mother has a form of dementia. Her mother needs a lot of care. What Lorie was saying, ''I already supplement my mother's income by buying her groceries, paying her utility bills, purchasing health care supplies. If Medicare benefits are cut,'' Lorie says, and I quote, ''it would be absolutely a devastating strain added to an already very difficult burden.''

We have to know that what the Republicans are proposing is the largest cut in history. We know we have to reform Medicare and Medicaid. Yes, there is fraud in the program and we have to continue to make it better, but cuts of $270 billion just do not make any sense.

I hope all the people out there understand that there is no reason to shut the Government down. We should be adults, get together and come up with proposals that make sense for the American people.

If the Republicans would stop tacking on these extremist proposals on all the appropriations bills, and the gentlewoman from California [Ms. PELOSI] and I sit on the Committee on Appropriations, we know that the Republicans did not do their work. They should have completed their work by October 1. That is why we are in this pickle that we are in, because they did not complete the work. It is because on all these bills they want to tack on extremist provisions, whether it is provisions in the environmental bills that cut back on our protection for the environment, or cutting back on education, or cutting back on health care.

We were sent here to stand up and fight for the Lorie Krafts of this world and their mothers, and I am very proud that our President is standing firm, that we are here tonight to make it clear to the American people. I hope you let Members of Congress know that we have to continue to fight to make sure that Medicare and Medicaid are preserved.

This is an important battle, and it is a battle for the soul and the values of our Nation. I thank the gentlewoman again.

I want to turn to my colleague the gentleman from Kentucky [Mr. WARD].

Mr. WARD. I just wanted to make one short comment. That is, that we have heard lately about the importance of charities helping out and we have heard about churches maybe stepping in.

I want to observe and make sure that people understand that if each of the 250,000 or so churches in America, there are about a quarter of a million churches, if each one had $1 million, $1 million that they could add, that would not even equal the tax breaks that are in this budget. It cannot be done in that way.

AMERICA NEEDS A BALANCED BUDGET

The SPEAKER pro tempore (Mr. RADANOVICH). Under a previous order of the House, the gentleman from Maine [Mr. LONGLEY] is recognized for 5 minutes.

Mr. LONGLEY. Mr. Speaker, I rise this evening again to call our attention to the national debt. As of 3 o'clock this afternoon, it now totals $4,989,584,833,636.17.

I have to confess to some amount of nervousness as to the stability of the platform on which the debt now stands, let alone the ability of this country to continue assuming a debt burden of this size.

I also again point out for the record that it is $4.989 trillion when in fact we have a national debt limit of $4.9 trillion. Again, it is important to understand that there is at least another $89 billion that is not included under the congressionally mandated debt limit, nor does this number include the $61 billion that the Treasury Secretary has borrowed from the Federal Civil Service Retirement Fund.

I would like to put some context behind the issues that we are discussing on the balanced budget and the need for this Congress to insist on finally, once and for all, balancing the Federal budget.

Our high level of Federal spending did not arise overnight. It took place, it built up over a 50-year period. In fact, you can trace its origins to the days following World War II when the U.S. economy was one of the few economies left standing in the world and it was booming. We had 8 or 10 million veterans or more returning from war, finding jobs in an economy, continuous growth and tax revenues coming into Washington on a level that no one in their wildest dreams could have ever imagined.

Very gradually successive Congresses, Republican and Democratic Congresses, became accustomed to very high levels of revenues and very willing to spend those revenues. In fact the case can be made that they became so accustomed to the high level of revenues that they began to think that they could spend more than the revenues that were coming into the Treasury. Hence, we now have at the end of these 50 years a national debt that is just under $5 trillion.

I should mention that at the same time that spending was increasing, taxes were increasing as well, from several percent of income in the late 1940's to well over 20 and 30 percent, in many cases 40 and 50 percent of income today, when you factor in local, State, and Federal taxes.

But the bottom line is that we have been spending more than we have been bringing in, particularly in Washington.

What does this have to do with the current debate? We have just listened to a very earnest discussion about some very valid concerns about the welfare of the seniors and those in this country who need help.

But the point that I would make is this: There are many valid concerns in Washington. But we have a duty to our country, to our children, to the taxpayers, to total up what is the amount of money that we are willing to spend on these different concerns.

I have to confess that this is a body that we organize along the lines of Republican and Democratic, majority and minority control. There is a reason for that. The heart of our system is a debate between two points of view.

This goes right back to the first Congress following the Revolutionary War, that having two points of view, having a two-party system, we get the best thinking of both parties. But I have to confess that today that is not taking place, because what we have on the one hand is a Republican Congress that has stepped up to the plate and come up with a 7-year plan to balance the budget, but on the other hand a Democratic Party that has refused to do so.

I note that today's papers indicated that President Clinton is now going to be offering his fourth budget. Fourth budget, that is, because not a single one of his budgets has achieved balance within the 7-year time frame. In fact, a good case can be made that none of his budgets would ever balance, that they would continue to pile on billions and billions of dollars on top of this Federal debt, a Federal debt that we and our children and grandchildren will have to pay not just for the rest of my life but probably for the rest of their working lives.

There is something moral about the fact that if you want to take a stand in favor of serious needs in this country, that you owe it to the public, you owe it to the Congress to step forward with your convictions and show the Congress how you would pay for it. That means that if you think, as our previous speaker suggested, if one thinks that the Republicans have not done a good job of setting financial priorities within a 7-year budget, that someone should step to the plate and show us how to do it differently.

Very honestly, that is not being done. I have a new appreciation for what the word ''rhetoric'' means, earnest language, but where is the substance.

CONTINUING THE BUDGET DEBATE

The SPEAKER pro tempore (Mr. BUNN of Oregon). Under the Speaker's announced policy of May 12, 1995, the gentleman from California [Mr. RIGGS] is recognized for 60 minutes as the designee of the majority leader.

Mr. RIGGS. Mr. Speaker, I am pleased to come to the floor tonight to be joined by some of my very distinguished colleagues, some of the best champions of our major concern and our foremost fight in the current session of the Congress, and that is balancing the Federal budget, to preserve the American dream for our families and for our children.

I asked the gentleman from Maine, who has become a real stalwart also in the fight, to leave out here on the floor his daily national debt clock, and I think as the gentleman from Connecticut [Mr. SHAYS], who is one of the senior members of the House Committee on the Budget, would attest, the Committee on the Budget actually has, I believe, an electronic version of the national debt clock which shows interest compounding on the national debt, second by second, minute by minute, hour by hour, day by day. I think this is a perfect backdrop for our discussion here tonight.

Before I turn to my colleagues for their comments and their contributions, I want to address the comments that were made by the President in his remarks to the American people, his brief press conference. This was a press conference without, of course, any interaction with the White House press corps, that he did not take any questions or comments from the media on Friday at just about the time that the continuing resolution which funded the operations of the Federal Government through Friday was about to expire. He made a statement in the White House briefing room that I believe should not go unchallenged and should not go unanswered, because it was in fact, when one looks carefully at his statement, a very elaborate attempt to mislead the American people.

I want to turn my attention for just a moment to his comments, and I am sure my colleagues, by the way, would join me in welcoming back to the House floor any of the speakers from the previous hour which were some of the more liberal members of the House Democratic committee, if they would really like to debate what has been happening back here in Washington as we seek to put our fiscal house in order and again balance the Federal budget in 7 years or less using honest numbers as provided by the neutral, nonpartisan Congressional Budget Office.

We should also remind the American people that the House and the Senate, with Republican majorities, have already passed a 7-year plan for balancing the Federal budget as certified by the Congressional Budget Office. That is the plan that, of course, went to the President, the plan known as the Balanced Budget Act of 1995 that he recently vetoed. That is the backdrop for carefully analyzing the comments that the President made again in his remarks to the American people and the White House press corps on Friday.

□ 2045

As I go through these, I want to give my colleagues who have joined me here on the House floor for this special order an opportunity to join in as well.

First of all, the President said on Friday, ''As all of you know, today the Republicans in Congress broke off our negotiations on how best to balance the budget in 7 years.''

The truth is, it has been 29 days since the President signed that continuing resolution back on November 20, committing to join with the Congress in developing and ultimately adopting a 7-year balanced budget plan as certified by the nonpartisan Congressional Budget Office, 29 days since the President signed a bill, signed a law committing himself and his administration to negotiate in good faith with congressional Republicans regarding a 7-year balanced budget plan. So the truth is that on the very first day of these budget negotiations, White House Chief of Staff Leon Panetta assured JOHN KASICH, who I think many of our constituents are getting to know, chairman of the House Committee on the Budget and the champion of the balanced budget fight in the House of Representatives, White House Chief of Staff Leon Panetta, one of our former colleagues, former member of Congress from California, assured Chairman KASICH that the Democrats could produce a CBO-scored budget that achieved balance in 7 years and reflected the President's priorities.

Twenty-nine days later, the administration has refused to keep its commitment. In fact, for anyone watching the David Brinkley show, ''This Week With David Brinkley,'' a show that aired yesterday, Sunday, on the ABC network, you would have seen Leon Panetta very carefully skirt the question as to whether or not any of the proposals that the administration has sent up here to Capitol Hill could be balanced using Congressional Budget Office numbers, when that question was posed to him repeatedly by Cokie Roberts, one of the ABC news reporters sitting in on that panel discussion.

So it has been 29 days since the President gave his word and made a personal commitment to join with us in balancing the Federal budget. We have done our work. We have kept our word in producing a 7-year balanced budget plan. And quite honestly, if the President does not like our plan, we believe that he has at a minimum a good faith requirement or good faith obligation to come to the negotiation table and present his own plan, pointing out where he would choose to differ with us. But he has failed to do that and we have told the administration, and I think I can say on behalf of my colleagues here tonight that, again, that our negotiating team, as Senator DOLE and others indicated in the Sunday news shows, our negotiating team is happy and ready to meet with the President at any time provided that he is ready to keep his word.

The President then went on to say, I want to turn to the gentleman from Connecticut to get his comments here, too, he said in this news conference, you really cannot call it that, these brief remarks on Friday, ''they said,'' referring to the new Republican majority in Congress, ''they would not even continue to talk unless we agreed right now to make deep and unconscionable cuts in Medicare and Medicaid. That is unacceptable.''

The truth is, of course, that we are increasing spending on both Medicare and Medicaid, although at a slower rate than the current projections because the current growth rate of both programs is unsustainable. The truth of the matter is that we increase Medicare spending per Medicare beneficiary, this is a very sensitive subject to me, because both of my parents are on Medicare and receive their supplemental health insurance through AARP. I think that is probably fairly typical of many older Americans, but both of my folks are on Medicare. So it rankles me, to put it mildly, when the President of the United States goes before the American people and claims that we are making ''unconscionable cuts in Medicare and Medicaid.''

We are proposing to increase spending per Medicare beneficiary over the next 7 years from roughly $4,800 today, I want to find the exact number here, I know I have it with me, here it is, we are proposing to increase Medicare spending per senior from $4,812 today, 1995, to $7,108 per senior in the year 2002.

So let me put it a different way. Our 7-year plan for balancing the Federal budget anticipates and assumes that we will increase Medicare spending per beneficiary from $4,812 today to $7,108 per Medicare beneficiary in the year 2002.

Those are not cuts. Those certainly in no way could justify the use of some of this rhetoric and demagoguery that we hear coming out of the administration during these budget negotiations. Again, it just obscures the truth. It diverts attention from the real issue here, which is will the President keep his word as he promised to do 29 days ago on November 20 and present to us, the congressional Republican majority, his own version of a 7-year balanced budget plan as certified by the Congressional Budget Office.

We want to see, I think I speak for my colleagues when I say, we would welcome an honest, serious proposal from the President using, as he promised to do, Congressional Budget Office numbers. We think that that would move these negotiations, which are at a stalemate and have led to a partial shutdown of the Federal Government, off of dead center.

Let me turn to my colleague and good friend from Connecticut, Mr. SHAYS, because I want to get his input at this juncture regarding these unconscionable cuts that the President talked about on Friday in the Medicare and Medicaid Programs.

Mr. SHAYS. Mr. Speaker, I came to this floor after listening to my distinguished colleagues on the other side of the aisle talk about certain statistics and facts that just simply do not hold up. They are not factually correct.

Part of the reason for being here is not only to correct the President and his news conference on Friday, which was not correct and, candidly, he did not allow himself, as you point out, to be questioned by the media.

This is a disagreement, be it a very significant disagreement, with the President and our colleagues on the other side of the aisle about the importance of getting our financial house in order and balancing our Federal budget. It is about saving Medicare from insolvency starting next year and bankruptcy in 7 years, and it is about ultimately changing our social and corporate welfare state where you have 12-year-olds having babies and 14-year-olds selling drugs and 15-year-olds killing each other and 18-year-olds who cannot read their diplomas and 24-year-olds who never had a job and 30-year-old grandparents. It is about changing that kind of society into what I would call a caring opportunity society.

Behind you you kind of block out that first number, but it is $4.9 trillion, almost $5 trillion of debt. That debt, in the last 25 years, has grown from about $350 billion to now $4,989 billion, et cetera. And so what are we about? We are trying to get our financial house in order and balance our Federal budget.

What we are asking the President to do is quite simple. If you do not, if you agree that we should balance the budget in 7 years, and he said yes, that is one step that is very important, we all agree. At one time he said 5 years, another time he said 8 years. But remember, that was 2 years ago. If we did a 7-year balanced budget 3 years ago, we would only have 5 years from now. So even our 7-year budget that he has, has 3 years now. We are talking about a 10-year budget from when he took office.

What is this battle about using CBO numbers, the Congressional Budget Office? It is not a partisan office. It is not even a bipartisan office. It is a nonpartisan office. We on our side have had tremendous disagreements with those numbers, but why would we want those numbers to be used instead of the Office of Management and Budget? The Office of Management and Budget are partisan numbers done by the President's political appointee.

We know from President Reagan and President Bush before them that when you use those numbers, you end up with what is called a rosy scenario. So 3 years ago, 2½ years ago, almost 3 years ago now, when the President addressed us in the State of the Union Address, he said, no more will we use the Office of Management and Budget, which is now his office. He said, we will agree to use the Congressional Budget Office.

Mr. RIGGS. I believe he said at least we can agree on using Congressional Budget Office numbers from this podium right behind me, and I believe that was his 1993 State of the Union Address.

Mr. SHAYS. And we can agree on that. And it forced us to do some heavy lifting this year. We did heavy lifting because the numbers required us to be real and then not estimate our way out of a challenge. And the reason we are doing that is so that, in fact, we will have a balanced budget in 7 years and not think that we might.

I could think of 100 analogies to give, but if you basically were working in a business and you knew that you had to balance your budget, you earned $50,000 a year and you said, Well, I am just going to pretend that I am going to get $60,000 a year and I am going to spend $60,000. If I pretend I am going to get $60,000 a year and I spend $60,000 a year, I have a balanced budget. Wrong. You are $10,000 over because you had a rosy scenario of your income.

In fact, you knew your income would not be that. So that is why we are willing to use the test of the Congressional Budget Office. It is not about who calls it from any personal standpoint. We just want it to be real. We want to do the kind of heavy lifting that we have.

There is a lot more we can talk about. I know we are joined by my colleague from Pennsylvania, and we have two other distinguished Members that will participate in this. I know my colleague from Pennsylvania came first.

Mr. RIGGS. Mr. Speaker, I yield to the gentleman from Pennsylvania [Mr. FOX] for his comments. He has been one, another champion who has been down on this floor, along with the gentleman from Georgia [Mr. KINGSTON], night in, night out, attempting to convey our message out beyond the beltway fog penetrating, if you will, the kind of the conventional Washington wisdom that seems to dominate and many times drive policy discussions in this city back out to the American people where they live in the local communities that are represented by us here in the Congress.

Mr. FOX of Pennsylvania. Mr. Speaker, I thank the gentleman from California as well as your colleague Mr. RADANOVICH and as well Mr. SHAYS and Mr. KINGSTON for being the truth squad, for getting the real message out to the American people. The fact is that when we asked the President to come out with a balanced budget, we were more than willing to go halfway and make sure that we achieved it. The last proposal from the President was $265 billion out of balance and certainly does not achieve the goal that Americans want.

Mr. RIGGS. Is the gentleman saying that the President has not to this date, because I think we have seen now, what, three or four different budget proposals or variations on his initial budget proposal. But the gentleman is saying that we have yet to have seen a budget from this administration in this Congress that would in fact balance the Federal budget and to the contrary what we have seen projects red ink, these deficits, in the range of $200 billion as far as the eye can see, way out into the next century.

Mr. FOX of Pennsylvania. Mr. Speaker, it is certainly correct when you say that there is no balanced budget coming from this administration. The President has not given us one yet. Yet on November 20 he promised, along with congressional leaders, that in fact he would produce with us a balanced budget in 7 years.

Alan Greenspan has come forward and said, he is not involved with just partisan issues for the President or for the Congress, he has said we have got to balance the budget because it will help us reduce mortgage costs, reduce car payments, reduce college expense, and make a middle-income people have a chance to have a part of the American dream. Ninety-five percent of Americans want a balanced budget for all these good Government reasons and good business reasons. And the fact is the President wants to support more D.C. bureaucrats and more taxes on the middle-income people.

We need to have a balanced budget. We have gone more than halfway by proposing additional $71 billion in additions to Medicare, Medicaid, child care, and education. I have to take my hat off to Congressman SHAYS from Connecticut because when it comes to the Medicare reform, we are going to save a system through his assistance, it is his legislation that said, how did we get into this mess, $30 billion of fraud, abuse, and waste and in Medicare has caused the biggest part of the problem.

Under his legislation we are going to have for the first time health care fraud in the United States that says that if you in fact commit such a crime, take money out of the pockets of senior citizens, you will not be provided any longer and in fact you will go to jail for 10 years, that money under that legislation we adopted will in fact make sure that the funds go back into a Medicare lockbox for seniors, reduce the cost of paperwork, make sure that medical education is a separate line item and in fact offer two new choices to seniors beyond the fee-for-service who also have the Medisave accounts and managed care.

By doing so, we will have quality medical care for our seniors and the system is preserved. Frankly, I am glad you have this truth squad so that Members can let people know we can balance the budget and save Medicare for our seniors and in fact as well save Medicaid.

Mr. RIGGS. I appreciate the gentleman's points. I want to reemphasize what he just said, because I think it is

a very important point, central to these ongoing budget negotiations.

The gentleman points out that our plans for preserving Medicare, for saving Medicare from bankruptcy and ensuring its solvency well into the next century, making sure that Medicare is there not just for today's seniors, our grandparents, but for tomorrow's seniors, the next generation of seniors as well, that our plans, known as the Medicare Preservation Act, were incorporated into the balanced budget act which the President vetoed a couple of weeks ago. Here is the wonderful irony of this, he vetoes the Balanced Budget Act a few days after signing the continuing resolution, which expired on Friday, but committed him to joining with us to balance the Federal budget in 7 years or less using honest numbers provided by the nonpartisan Congressional Budget Office.

So I appreciate the gentleman making that point. I just wanted, the gentleman, I think, stressed this, but I want to add again that the President on Friday said, I go back to his comments, I would love for one of our Democratic colleagues to hustle down here to the floor and perhaps explain and justify the President's comments for us, but he did say on Friday in his televised remarks again, I have already quoted him a couple times. I want to quote him one more time, that they, referring to congressional Republicans, would not even continue to talk unless we, referring to congressional Democrats and the President and his administration, agreed right now to make deep and unconscionable cuts in Medicare and Medicaid.

□ 2100

Well, let me just point out that under our proposal to balance the Federal budget in 7 years we reform Medicaid, we turn it into a State block grant program, but we increase spending on Medicaid by 43 percent, 43 percent, which the President of the United States calls in his careless rhetoric and demagoguery an unconscionable cut, a 43-percent spending increase, going from $89 billion this year spent on Medicaid to $127 billion in the year 2002, and the other point that the gentleman made, which is that last week we agreed to recommit our 7-year balanced budget proposal to the Congressional Budget Office so that they would have another opportunity to score it, which just means simply review it and make certain informed estimates and projections, we submitted that plan, which we are now calling the Balanced Budget Act of 1995 to—this is a sequel that is better than the original—but we submitted that to the Congressional Budget Office, and they said that based on an improving economy and more optimistic economic assumptions and projections that we would have an additional $135 billion available to the budget negotiators, and, as the gentleman from Pennsylvania [Mr. FOX] points out, we have already proposed, we have put on the table late last week before the continuing resolution expired, a proposal to spend between $70 and $75 billion of the $135 billion on Medicare, increased spending for Medicare, Medicaid, and the earned income tax credit as evidence of our good faith, yet we have not yet to date seen any evidence of good faith from this President and this administration.

I would like to turn now to the gentleman from Georgia.

Mr. KINGSTON. Well, I think that it is important that we do emphasize to the degree that people outside of Washington understand we are not even cutting the budget. You look at the overall spending; we are not even freezing it. The Republican Party is arguing about increasing the growth $3 trillion over the next 7 years, and President Clinton wants to have it increase $4 trillion over the next 7 years, so what we are arguing is 3 versus 4 trillion new dollars in spending, and, as you have pointed out, while the President will say that we are devastating, and decimating, and dissecting, and all kinds of bad things Medicare, he—we are still increasing it 42 percent, and it is interesting also that on that same subject that Haley Barbour, the President of the Republican National Committee, has said that, if any Democrat House Member, Democrat Party member, American citizen, or even Republican can show where we are cutting Medicare, well, then come pick up a million-dollar check, and what was so ironic is I listened for months, and months, and months to the folks on this side of the aisle saying, ''You're cutting, you're cutting, you're cutting.''

Well, here is your chance, come get a million dollars. I do not think any of them are going to make that much in the U.S. Congress, not legally anyhow, but you can imagine. We should have had a line of people coming in saying, ''I want my million dollars. You all are cutting that budget.'' But nobody has stepped forward with it.

Now just think about it. If you were a Democrat Party member, and you have been saying all along, ''Republicans are cutting, and cutting, and cutting,'' what a hero you would be to your side if you could pick up that million dollars. The motivation would just be incredible to do it, and yet that offer is what? Ten days old now? Have not heard, still out there, silence.

You know my little boy plays on a soccer team, and it is ironic, as I go out to the soccer fields, and I look at these kids, and I realize that we have an opportunity to do something for them: more jobs because interest rates will come down, lower home mortgages, more student loans at lower interest rates. We are increasing student loans, as you know, and we have got this great opportunity for these children, to do something for them now.

And I was thinking, you know, now what would happen if kids could vote, if kids could vote on all the spending programs that President Clinton and the administration are saying are for children, for children, for children; what if they could vote and say, ''Hey, wait a minute, wait a minute, Mr. President, I don't want to be stuck with the tab that you have run up to us, that each boy and girl born today owes $187,000 in interest as his or her share of the national debt on top of local, Federal, and State taxes.''

I have a nephew, Morris Watson. He is going to owe $187,000 in interest on the debt. This is real stuff.

Let me get back to the soccer field, and I want to yield back, do not want to grab the mike too long, but ironically the name of my son's soccer team is Budget, and I was thinking, you know, you do get spoken to in different ways and different omens are out there, and I was thinking while I am away from them during this Christmas week, as we all are, you know, maybe there is something that is worth fighting for out there because, if those boys and girls on that soccer team can live in a world where there is a balanced budget and a government that is honest, then maybe this is and certainly this is worth what we are trying to do.

Mr. RIGGS. Very much appreciate the gentleman's comments, and he also helped us sort of set the context for the rest of our conversation this evening when he pointed out that our plans for balancing the Federal budget over the next 7 years anticipate that we will spend $12 trillion on the programs, the agencies, the beneficiaries of the Federal taxpayers funded by Federal taxpayers as opposed to $9 billion over the last 7 years, a 3—did I say billion?—$9 trillion over the next 7 years versus—excuse me, $9 trillion—let me slow down $12 trillion over the next 7 years as opposed to $9 trillion over the last 7 years, a $3 trillion spending increase.

Mr. KINGSTON. If the gentleman would yield a second, I want to, you know, remind folks that I really and truly think that if a lot of people knew that we are not really talking about cutting the budget, they would be furious, you know, these right-wing freshmen that we keep hearing about. If they knew, hey, you are going to increase the budget $3 trillion, they and the sophomore class that I know, we would be out of a job. The people would be disgusted with that.

Mr. RIGGS. The gentleman is so right, and we are finding out, I am sure when we go home, even though our opportunities to do that have been rather limited in recent weeks because of these ongoing budget negotiations and the current crisis here in Washington, but we are finding out when we go home and have an opportunity to speak with our constituents, have an opportunity to engage in some public education about our budget proposal, that there is broad and deep support for our plans. In fact I dare say all of us are hearing on a daily basis from many constituents who say, ''Hang in there, stay the course, do the right thing.''

Mr. SHAYS. If the gentleman would yield and then I know my colleague has been waiting awhile, you know I am not getting that from everyone because I might get from someone that they do not like the incredible increase in spending that we are doing on Medicare, increasing the co-payment and deduction. I am saying, ''Excuse me, we're not increasing the co-payment, we're not increasing the deduction.'' They say they do not like the fact that we are throwing them and forcing them to have private care and they have to leave their fee for service. I say, ''Excuse me, we're not doing that either.''

So, before yielding to my colleague, I just want to point out something on Medicare that my colleague has pointed out, that Medicare is going from $178 billion to $289 billion by the 7th year. We are going to be spending about in the last 7 years $926 billion for Medicare rather, and in the next 7 years we are going to spend $1.6 trillion on Medicare, an increase of 727 billion of new dollars.

Now we did that with no increase in co-payment, contrary to what our colleagues said earlier. I mean it is just a blatant falsehood for them to say that the deductible went up or the co-payment went up. It did not. The beneficiary premium stays at 31½ percent, 31½ percent of the cost. Now obviously as the costs go up 31½ percent is a higher number, just as it has been in the past. But the taxpayers are still going to pay 68½ percent.

Now with our Medicare Plus, Mr. Speaker, people can stay in their fee for service, or they can get private care and get better care. If they do not think it is better care, they have every month for the next 2 years, they have the opportunity to get back.

So I just want to correct one point. My colleague is right. I have a lot of people say $4.9 trillion debt is obscene and it stopped deficit spending, do it, and they say, ''Do it sooner than 7 years.'' But some say they do not like what we are doing with Medicare until I tell them what we are doing. When they learn what we are doing, they say, ''Hey, it makes some sense,'' and I just would conclude by saying my colleague from Washington pointed out what we were doing with Medicare and described how you could not afford to continue to pay people $4,900, and I am thinking where is he getting that number from, what is he talking about? We allow—the beneficiary rate is at $4,800 in 1995. It goes to $5,200 in 1996. It goes to $5,490 in 1997. It goes in 1998 to $5,563; in 1999, $5,776, and the year 2000 it goes from—to $6,221, and just two more. In 2001 it goes to $6,634 and the year 2002, as you point out, it goes to $7,108.

Where is the cut?

Mr. RIGGS. That is exactly the point. I believe that Haley Barbour, our friend, the chairman of the Republican National Committee, is trying to make with what is admittedly a pretty unusual, even novel proposal in American politics. Now the gentleman has pointed out, I made the point earlier, under our Medicaid reform proposal, known as Medigrant, spending goes up 43 percent. The gentleman has just pointed out that Medicare spending increases by more than 50 percent. So where are these unconscionable cuts that the President of the United States was talking about on Friday? It has caused Haley Barbour, again chairman of the Republican National Committee, under the theory that it takes a big check to expose a big lie, the big lie as far as I am concerned when you look at the whole mediscare campaign that is being waged by the congressional Democrats through their campaign arm through what I think is just a naked, but desperate, attempt to win back the control of the House of Representatives—it has caused Haley Barbour to now come out and say—he has now come out and offered, as the gentleman from Georgia pointed out, a cashier's check for $1 million to the first American, so that certainly would not exclude a Member of the House Democratic Party—the first American who can prove the following statement is false, quote, ''in November 1995 the U.S. House and Senate passed a balanced budget bill.'' it increases total Federal spending on Medicare by more than 50 percent, as the gentleman from Connecticut has just pointed out, from 1995 to 2002 pursuant to Congressional Budget Office standards, and, as the gentleman from Georgia pointed out, the response so far has been deafening silence.

Let me turn now to my good friend, who has been waiting patiently, and colleague from California, Mr. RADANOVICH.

Mr. RADANOVICH. It is good to be here tonight with a fine bunch of gentlemen on both sides of the aisle, and, you know, I had the opportunity to be in the Chamber during the time when the—when my colleagues were discussing the current shutdown that we are in and the events that led up to it, and I found myself puzzled to really not hear much mention of the importance of the Congressional Budget Office calculating these budgets, and not so much the CBO, but one office doing this, doing these calculations, and you know the thing that really surprises me the most is that on November 20 an agreement was signed between the legislature and the executive branch, and in that commitment was a proposal that was to be developed by the White House that was to be sent to the Congress that would balance the budget in 7 years according to CBO numbers, and in those things would be priorities of Medicare, Medicaid, education, the environment. It is very, very difficult, and I think people cannot understand this budget process.

I mean I have been here 11 months, and I have watched this process, and I have had the opportunity to watch it first hand, but the average American does not get that ability, and I am sure what they see here in this process is so mind boggling, and part of it is because, if you and I are negotiating a budget on two sets of books, you may as well be speaking Chinese, and I may as well be speaking Croatian, none of it is going to be making sense, and yet this is the way we have operated in this Chamber for 40 years, so that people can say, yes, I want to protect this program and I am only going to spend this much according to these numbers, and this party over here can say I want to accomplish the same thing, but I can, you know, be this or—I can do it in such a certain way that I can be nicer about it. And unfortunately the world does not work that way, and I would, you know, I would say to every American right now that nobody in their right mind would want to discuss or negotiate a budget based on two sets of books. It just does not work.

□ 2115

It just does not work. That is why we are so insistent about using one agency, the Congressional Budget Office. So if the President, and going back to the November 20 agreement where he decided, if the President has in his priorities, and I think we all have those same priorities of protecting Medicaid, Medicare, protecting the environment, and also education, then why did he not submit a budget that balanced by the Congressional Budget Office that proved that with those resources he could protect those programs and have his own sets of priorities in them?

Instead, what he did was that he got the 7-year part right, and he got just about nothing else right, because he did not score it according to the CBO, and all his priorities in his way put us out of balance by $365 billion at the end of 7 years. This is not logical and this does not make sense.

That is why we here are saying our priorities are a 7-year balanced budget, scored by CBO, and then we are going to concentrate on deficit reduction. But how can you even think of affecting that number right there that is beside you without using a common set of books so we are all speaking the same language? Once you have that, then we have constructive dialog.

Mr. RIGGS. The gentleman is so right. Any successful negotiation is based on certain common assumptions and premises. That is what we thought we were doing when we sent this continuing resolution to the President, which he signed into law. Nobody twisted his arm back on November 20, 29 days ago, committing to use the nonpartisan, neutral Congressional Budget Office as the honest referee, if you will.

Mr. FOX of Pennsylvania. If the gentleman will continue to yield, the gentleman from California has certainly outlined well what the American people are thinking. The point is they have to balance their own home budget, State governments balance their budget, county governments do, school boards do. Why is it that the Federal Government has not?

Since 1969 we have now acquired, because Congress has not balanced its budget and has been overspending, we have now a debt of $4.9 trillion. People are paying taxes every year and not getting much for it. I hope the President will meet us halfway and hope we will meet that balanced budget in 7 years, which he has already committed to, and the American people want for the savings it will bring.

Mr. RIGGS. Exactly. I want to point out that even though the President has made that commitment of signing the continuing resolution of the four budget proposals he has sent up to Capitol Hill, he comes nowhere close to actually balancing the budget. He talks again about these unconscionable cuts, which are not real, but knows in his heart of hearts there is no way you can balance the Federal budget without taking on the entitlement programs which have been growing at an exponential, unsustainable rate. He knows that full well. We have said throughout these budget negotiations over the last 29 days, while waiting for the President to come to the table, that everything is on the table.

I think I can safely say for my colleagues tonight, everything remains on the table with the exception of no 7-year plan using Congressional Budget Office numbers from the administration. That is the one thing we have yet to see on the table. It is the one thing that is absolutely essential to good-faith negotiations that can conclude in a successful balanced budget agreement between the Congress and the President.

Mr. Speaker, I yield to the gentleman from Arizona [Mr. SHADEGG].

Mr. SHADEGG. Mr. Speaker, I would like to thank my colleagues, the gentleman from California [Mr. RIGGS] and my other colleagues here tonight. I really came down from my office after listening to the discussion here on the floor to make two points. The first has to do with the discussion of what numbers do we use in trying to balance the Nation's budget.

I was on the floor when I listened to the gentleman from California's remarks about yesterday's appearance by the President's Chief of Staff on this week with David Brinkley. I will tell you I was shocked by that, because it was really, in fact, a rather shocking revolution, or revelation, which is not part of this revolution.

What happened is that Cokie Roberts said, ''Look, you, through the President, agreed 3 weeks ago after a 6-day shutdown, the Nation was shut down, the Federal Government did not operate for 6 days, at the end of that you came to an agreement. The agreement was that you would put forward or ultimately agree to a budget which balanced in 7 years using CBO numbers, and with consultation with OMB.'' She put to him point blank, ''in that agreement you said you wanted to protect certain programs: Medicare, Medicaid, education, and the environment. Is it possible,'' she put directly to him, ''Is it possible, Mr. Panetta, for you to put forward a budget which the President will agree to which is scored by CBO, reaches balance in 7 years, and protects those programs?''

And as you pointed out, he dodged the question the first time. He dodged it the second. He dodged it the third. Ultimately, in frustration, Ms. Roberts said to him, ''The answer is it is not?'' And essentially he conceded that point. He basically nodded his head and acknowledged that he had grave doubts. As a matter of fact he went beyond that and he said, ''No, not without further revision in the current CBO numbers.'' That is, ''No, it is not possible. It is only possible for us to do that if CBO changes the numbers.''

That raises a fundamental question, because as my colleague, the gentleman from California, has pointed out, it is impossible to do a budget using two different sets of numbers. We have to first come to agreement on a set of numbers. Why, the American people should ask themselves, did the President agree 3 weeks ago, now almost 4 weeks ago, that he would propose a budget or agree ultimately to a budget which balanced in 7 years, using CBO, after consultation with OMB, that protected those priorities, his priorities on education, Medicare, Medicaid, and the environment, if in fact his Chief of Staff 3 weeks later says it is impossible, it cannot be done? I was shocked by that revelation.

I was further shocked to find that in the day we discovered another fact. That was while the President had asked for OMB to consult, OMB did not begin consulting until the day before the day the budget resolution had to be agreed upon; that is, funding ran out on our current resolution on the 15th, and the President's OMB office did not even begin consultation, something he had fought for, until the 14th, a second shocking event.

Then I was rather stunned when last evening I flipped through the dial and I caught the President himself being interviewed in front of the church he attended yesterday. He was asked the same question. I do not know how many of you caught it. He was asked the question: ''Mr. President, is it possible for you to put forward a budget balanced in 7 years by CBO numbers that protects your spending priorities?'' And in direct contradiction of his Chief of Staff, he said, ''Absolutely.''

As far as I am concerned that means he has a duty to put it forward, he should put it forward. If he says absolutely, he needs to sit down with his Chief of Staff and put it forward so we can all move forward and get it started again.

The second point I want to make is one I found phenomenally encouraging. It actually made my day today. That was as revealed in this chart. Tomorrow I am going to have a larger blowup of this chart made. I have distributed copies of several of my colleagues here. There is tremendous encouragement for the Nation here in this chart. We all know that we must reform entitlement spending if we are going to save the Nation. If we are not going to continue to pass the debt as laid out in the chart behind you on to our children and our grandchildren, it is necessary to look at our spending priorities.

This chart is phenomenally encouraging. It appeared in today's Time Magazine, the Time Magazine which has the Speaker on the cover and makes him Man of the Year. It is a poll taken by Time and CNN, by the Yankelovich Partners, Inc., taken December 6 and 7, that it is a very, very current poll.

The fascinating thing about this is that although our colleagues on the other side of the aisle have spent $22 million in advertising telling us how draconian and how extreme our cuts are, and although the President has had almost a monopoly on the press coverage and the media coverage saying how extreme and outrageous our cuts are, here is where the American people stand as of December 6 and December 7.

True, 47 percent of them have bought the argument that our cuts go too far. But look at the other side of the graph. If you add up those who say our cuts are about right, 27 percent, with those who say we have not yet gone far enough, which is 19 percent, you discover that 46 percent of Americans think that we either have gone the right distance or should be actually cutting even further. That is a dramatic testimony to the validity of what we are doing here in the Congress, to the message that we are getting out.

Mr. Speaker, it is important to understand that you can mischaracterize our program until the cows come home until it is enacted. It is what our mothers taught us as we were going to the doctor and dentist at the time: Anticipation is worse than realization. They can claim that we are gutting Medicare, because our proposal is not in law. All we can do is rhetorically defend it, and point out that Mr. Panetta voted for deeper cuts in Medicare himself.

Mr. SHAYS. When you say cuts, if I can just correct the gentleman, we are talking about significant increases. What we are talking about is slowing the growth. If the gentleman is referring to the fact that we are slowing the growth of Medicare to 7.2 percent, and he recommended slowing the growth less than that, as did Mrs. Clinton——

Mr. SHADEGG. As did the First Lady. In any event, they can mischaracterize our program as long as it does not go into effect. Look at this poll. This poll shows even with their mischaracterization of what we are doing, and by the way this says ''Cuts,'' which in fact we all know none of these are cuts, every program is going to grow, and grow roughly at the rate of

inflation or better in some instances; but even with all that and even with the media opposition we have, as a very current poll done by Time Magazine, not in-house by any stretch of the imagination, says that the American people are divided on this issue, with 46 percent saying we are either going about the right amount of cuts, or maybe not going far enough, versus 47 percent saying we have gone too far.

Mr. SHAYS. Mr. Speaker, if the gentleman from California will continue to yield, I would point out that what is incredible is that people actually think we are cutting. When they learn that we are allowing Medicare to grow so significantly, that number that you see at 19 percent says we are not going far enough expands significantly; the number of 27, saying that it is just about right, becomes much larger, and that number of 47 saying we have gone too far, a good number of those disappear, because they realize we are not cutting the program, we are increasing it.

Mr. SHADEGG. I would quickly point out, even the question puts it wrong, ''have the cuts,'' and we are not cutting, we are not. No, they are not cuts in Federal spending; have we gone too far—they are not cuts in Federal spending, they are reductions in the increase in spending. Had the question been put properly, the numbers on this graph would be dramatically more in our favor.

Mr. KINGSTON. Mr. Speaker, if the gentleman will continue to yield, if you would take out members of the media in this 45 percent, it would fall down to 25 percent.

One thing that has been quite clear this whole time, it is that whenever you read the poll numbers, the poll numbers shows the media loves President Clinton far more than they want to give Speaker GINGRICH or Leader DOLE a fair shake, so I think that is one of the realities.

When people back home say to me, ''Do not cave,'' their second comment is, ''Doesn't the media make you sick? You cannot believe anything you hear on national networks.'' They have shot their own credibility in the foot. I do not know that they realize that they are not—they are listened to, but they are not believed at all.

Mr. SHADEGG. Just one quick question. The credibility risk is by our colleagues on the opposite side of the aisle, because they are making the claim that what we have done is extreme. As soon as we get it into effect and we are at the next election and you can see what the reality is, that claim will be clearly hollow, and how they will defend it then will be a grave problem for them, I would suggest.

Mr. RIGGS. I appreciate the gentleman's point. I want to go back, because I think we all feel a little pent-up frustration at this careless demagoguery and rhetoric that has been thrown all over this town, particularly when it comes from the one person who enjoys the bully pulpit.

The bully pulpit, as Teddy Roosevelt called the Presidency, suggests, I believe, that our national political leader should speak with some moral authority, and hopefully some credibility at all times. Yet I go back to the President's comments on Friday when he said, ''Now the Republicans in Congress are not only refusing to talk. Once again they are threatening to shut the Government down if I do not accept their deep cuts in health care, education, the environment, and their tax increases on working families. I did not give in to such a threat last month and I will not give in today.''

Here is the truth. I do not know, honestly, when I hear this kind of rhetoric, what the President of the United States is talking about. There are no deep cuts, as we pointed out here on the floor tonight. Medicare and Medicaid spending will increase by more than—are you ready for this—Medicare and Medicaid will, combined, increase by more than $1 trillion, $1 trillion. Education spending increases by $25 billion.

As I mentioned a little earlier, on Friday, just before the continuing resolution ran out and we had this second partial Government shutdown, we offered a good-faith proposal which increased discretionary spending by $25 billion, including additional spending for the environment and education.

As far as tax increases on working families go, there are none, period. In fact, maybe Haley Barbour ought to extend his offer, the $1 million cashier's check for anyone who can prove that there are tax increases on working families, because middle-class families, working families under our balanced budget proposal, are offered a $500 per child tax credit. We increase spending for the earned income tax credit by 131 percent. Our reforms will ensure that all qualified families with children receive at least the same benefits as called for in current law.

In fact, the gentleman from Arizona made mention, as I did earlier, of Leon Panetta's comments on the Brinkley show yesterday. He also said yesterday, and I quote: ''They increased taxes on working families by getting rid of the earned income tax credit.'' He claimed that we get rid of the earned income tax credit, when in fact we will spend $93 billion, $93 billion more during the next 7 years compared to the previous 7 years, as I mentioned earlier, a 131-percent increase.

□ 2130

So the American people are under the wrong impression. Let us be honest about it. It is because they are being misled and deluded by the President of the United States.

Mr. RADANOVICH. Mr. Speaker, if the gentleman would yield just briefly on that one point. My comments were pertinent to your remarks, and I cannot stress too much the concept of dealing squarely off of on set of books. Because when we try to tackle this number here and we try to balance this budget, and we are really serious about doing it, our options become severely limited.

Once the executive and the legislative branch are committed to one set of numbers, the demagoguery stops and the heavy lifting starts. Unfortunately, we have not seen heavy lifting from the executive branch of this government in dealing with this issue. That is why we are here today, very likely to even spend Christmas Day in this legislature, waiting for the President to make good on his commitment, his promise, to submit a balanced budget scored by CBO, using common ground, which is apples-to-apples comparison, which is CBO numbers.

Mr. RIGGS. Mr. Speaker, I yield to the gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Speaker, unfortunately, there is a grain of truth in something the Democrats say, and then they blow it out to an unrealistic statement, and that is that we have decided that the earned income tax credit should go for families. We have said that a single individual will no longer qualify for the earned income tax credit. We do, though, provide for it.

The other area where again, unfortunately, my colleagues on the other side have decided to distort what has happened, the earned income tax credit, which was $19.9 billion this last year, grows to $25 billion in the year 2002. It is a significant growth. Had we not made changes in our balanced budget bill, that would have grown to a higher number than 25. So that is kind of where they make their point.

Where they fail to acknowledge the facts is that any family that is under the earned income tax credit with our $500 credit will get as much as they got in the past, and in our legislation we hold everyone harmless, we grandfather them so on one will get less.

So it would really be I think somewhat of a distortion on our side to overstate the fact that we have made some tough decisions. We are slowing the growth of Medicare, we are slowing the growth of Medicaid, we are slowing the growth of the earned income tax credit. We have made some very real cuts in discretionary spending; actual cuts, not just slowing of the growth. Overall spending goes up, but there are some real cuts.

Now, my whole point and why we need to weigh in significantly on the entitlements, Medicare and Medicaid, and why we want to save money in those programs is it is a concept of opportunity cost. If we do not slow the growth of Medicare the way we do in Medicaid, then we are going to have to slow the growth of another program or actually cut another program; and this is the problem that the White House is faced with. They cannot balance the budget, even though the President says so, because they are unwilling to say well, if we put more in Medicare and Medicaid, we are not going to be able

to put as much in some other programs.

We have had to deal with that. We have made those tough decisions.

Mr. Speaker, I cannot tell you that I like everything in our budget. I was kind of hoping the President would come in and look at what we have done in urban areas; I would like to have seen the President weigh in in that area.

Mr. SHADEGG. The natural consequence of what you are explaining is that the choice that the American people are hearing from the White House right now is a false choice. Let make that point. What the White House is saying is that Republicans want to cut these programs too far, and what I propose is that, instead, we could keep them all going and you will have them. So it is a choice he is presenting between we can have what we have plus maybe even a little bit more off into the future, or less, which is what the Republicans are proposing, that we have to scale these programs back down to where their growth matches inflation. He says, that is the choice.

That is a false choice, because in reality, and even the President's own cabinet in the instance of Medicare has made this point poignantly clear in their report, that is not the choice at all. If we pursue the course that the President is advancing, that is, allowing the growth to go unchecked, in a very brief time, it will be bankrupt. So it is not a question of keeping it the way it is or scale it back; it is a question of scale it back or have it go bankrupt and be gone, and not be there for anyone. That is the fundamental falsity in the debate.

We simply have to in these entitlement programs restructure them in a way that makes them sustainable over time so that the beneficiaries can get the benefits, or they will go bankrupt and be gone and not be there for anyone, and that is the fundamental truth.

Mr. RIGGS. Let me yield to the gentleman from Pennsylvania, and then I will go to my colleagues for their concluding comments.

Mr. FOX of Pennsylvania. The fact is that seniors under Medicare under this reform package will still have the benefits they have been having for fee-for-service or for the Medisave account or for managed care. What we are doing is taking out the waste from the program, the fraud and abuse, and $30 billion is a lot of money. We go to electronic billing instead of the huge paperwork costs we have had, and making sure that we have in fact, besides the savings, the medical education portion being separate, we are going to give the best medical care for our seniors that they have ever had; but we also giving choice, when they have never had, and that is a great new plus that should be stressed.

Mr. RIGGS. I appreciate the gentleman's comments and his participation tonight. Let me yield to the gentleman from California.

Mr. RADANOVICH. Just briefly, I want to say that negotiating off the same set of books for the first time will get us into constructive debate on balancing the budget. We have not had constructive debate up until this time.

Mr. RIGGS. In other words, the gentleman is saying, it has been 29 days and we are still waiting for a good-faith proposal from the administration, using Congressional Budget Office numbers, so that we can, as I think we all hope and wish, reach an agreement, a bipartisan agreement with the administration regarding balancing the budget. We need to remind our colleagues and our constituents that the American people, to date, seem to prefer divided government; the tables are reversed from the 1980's, the legislative branch is under the control of one party, the Republican Party, the executive branch of government is obviously under the control of the Democratic Party.

So we must, by definition, work in a bipartisan fashion here because we do not have the votes in either House of Congress to override the President's veto.

So Mr. President and our Democratic colleagues, we recognize that we must, at the end of the day when the debate has ended, reach a bipartisan agreement here, but as the gentleman from California points out so well and so eloquently, we cannot do that if you will not come to the table in good faith and participate in these negotiations using Congressional Budget Office numbers.

Let me yield to the gentleman from Connecticut, or the gentleman from Arizona, for their concluding comments.

Mr. SHADEGG. Mr. Speaker, I would just conclude by saying, we have spent most of the last hour, with the leadership of the gentleman from California [Mr. RIGGS] talking about the nitty-gritty of this and the details, and the fact that using real numbers and using a common set of numbers is important. However, one of the greatest communications, I get from my constituents is a sense of frustration: Why can they not in the Congress and in the White House act like adults and resolve this issue?

I would ask the American people to step back and to recognize that this is not a petty little fight over numbers; it is a contrast between two different visions for America. One which simply says, we can go on the way have been going forever and we do not ever have to pay the piper, that in fact we can spend and we can spend, and the Federal Government is not too large and it can do all things for all people.

The other is a very different view of government, which is the Federal Government has tried for 40 years to be all things to all people and has failed, and in doing that, it has not solved the social problem it has addressed, it has made them worse. But worse than that, in doing that, it has created the debt that burdens our children and our grandchildren.

So I implore those listening tonight at home that, yes, it looks like a petty fight, but it is really a very important fight; it is a fight over different visions of America and one which we all hope to resolve as soon as possible, but one which is essential to determine the direction of this Nation for the future of our children and our grandchildren and for the solvency of the Nation as we move forward.

Mr. RIGGS. I very much appreciate the gentleman's comments, and he puts it so well and really reminds me of the comments that were made by our leader, the Speaker of the House, NEWT GINGRICH as he points out, Time magazine's Man of the Year, earlier at a caucus of our conference when the Speaker pointed out, and I really agree with him when he says that if we fail in this task, our most important challenge as Federal legislators, Members of Congress, it will be a generation or more before the American people through their representatives can muster the political will to deal with these fiscal issues and balance the Federal budget; or as JOHN KASICH puts it even more simply, this is our last best chance.

Mr. SHAYS. Mr. Speaker, I am actually going to yield, speaking of JOHN KASICH, back to the gentleman from Connecticut, Mr. SHAYS, a member of the Committee on the Budget to conclude our special order, because he has been right there alongside JOHN KASICH as a real model of integrity.

We have been a family of this Republican Party to try to get our financial house in order and try to emphasize that we have an opportunity that does not happen often, and if we fail as this majority party to present a plan to balance our budget and end this obscene debt of $4.9 trillion, if we fail now, we will not have that opportunity for decades.

I would just make the point that Mr. Rabin said before his assassination that he was elected by adults to represent children, and that is what we are all about. We are looking to stop mortgaging our country's future, and we have devised a plan that still provides for significant increases in spending, but in the seventh year balances our budget.

The earned income tax credit will go from $19 billion to $25 billion. School lunch will go from $5 billion to $6.8 billion. The student loan will go from $24 billion to $36 billion. Only in Washington when you spend this kind of money do people call it a cut.

Our Medicaid goes from $89 billion to $127 billion, Medicare from $178 billion to $289 billion. These are significant increases in spending. But by the seventh year revenue and spending will equal. We are doing it for our children and their children. That is what it is all about. We are trying to do it in a humane way, and we are eager to have the participation of the White House in

coming forward with its balanced budget, and then compare where our priorities are, and then work out our differences. And our differences can be worked out.

Mr. Speaker, I would like to thank my colleague for allowing us to participate in this special order. I just want to welcome, I know we have a new member, JESSE JACKSON, Jr., joined by Mr. FIELDS, to distinguished Members, and it is nice to serve in this body with them.

Mr. RIGGS. I very much appreciate the comments of the gentleman. I very much appreciate the participation from my colleagues. I am mindful that the San Francisco 49ers are playing the Minnesota Vikings.

I just want to reemphasize in closing the point that the gentleman made so beautifully. I really believe that there is bipartisan, I hope there is emerging bipartisan consensus in Washington and across this land that the American people want a 7-year balanced budget using honest numbers to save Medicare, returning power to families and to State and local governments, reforming welfare and providing tax relief for families and job creation.

I thank my colleagues again for their participation.

BALANCED BUDGET REQUIRES BALANCED APPROACH

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Louisiana [Mr. FIELDS] is recognized for 60 minutes.

Mr. FIELDS of Texas. Mr. Speaker, I rise tonight to talk about America's budget. I think all of us tonight are in favor of a balanced budget. I am certainly in favor of a balanced budget. I think the big impasse that we have here in this Congress tonight is how we balance the budget, not whether or not we balance the budget in 7 years, 5 years, or 10 years.

The biggest issue that we are confronted with tonight is how do we balance the budget. I think there are too many people who want to balance the budget on the backs of the poor people and at the expense of the environment; who want to balance the budget at the expense of college students who are trying to matriculate in school and get a decent education; trying to balance the budget on the backs of individuals who want to go to schools that are drug-free and live in communities that are drug-free.

So I think that is the real issue that we are faced with tonight is, how do we, in fact, balance this budget.

In order to balance a budget, you ought to start with a balanced approach, and until we have a balanced approach, we will never have a balanced budget. This Government is shut down today because we do not have a balanced approach to balancing the budget. I want to stand tonight to talk about how we get to a point of bringing about a balanced approach to balance the budget so that we can look to create an atmosphere for our children in the future.

If you look at this present budget, it cuts $750 billion over 7 years. Quite frankly, I can stand tonight and be for a $750 billion cut. But the issue is where do we cut the $750 billion to balanced the budget by 2002. Under this balanced budget amendment, it takes $218 billion and gives it to the richest people in America. One percent of the people in this country will receive a tax break under this balanced budget.

The poorest people, 20 percent of the poorest people in America are impacted; the balanced budget affects them, 50 percent of those individuals will be affected by this balanced budget. Those cuts are on the backs of these individuals more so than it is on the backs of anybody else. Forty-seven percent of the proposed cuts goes to 12 percent of Americans who make $100,000 or more.

So the issue tonight is not whether or not we balance the budget; the issue is how do we balance the budget; $359 billion of the $750 billion in cuts are in Medicare and Medicaid. Over 7 years, $133 billion in Medicaid cuts will come about under this present balanced budget amendment.

□ 2145

Twenty-seven percent of those cuts will be in the Louisiana Medicaid Program. So I take a matter of personal privilege tonight to talk about how these cuts will affect constituents back home.

I do not come from a State that is very wealthy. I certainly do not represent a district that is very wealthy. I represent one of the poorest congressional districts in the entire country and the poorest congressional district in the State of Louisiana.

Medicaid cuts would deny benefits to about 3.8 million children. These are the individuals who can least defend themselves. They cannot come to the floor of the House. They cannot lobby in the Halls of the Congress. They cannot get on an airplane and fly to Washington, DC, and talk to Members of Congress. But they will be affected by these cuts.

Three hundred thirty thousand elderly people could be turned away from nursing homes. These are the elderly, the sick people in this country, who have put everything they had over the years into this country, who have worked hard. People say, well, it is an entitlement program.

We have had people who wake up every morning and go to work every day, and now they need the help of their Government. They have invested in Social Security. Now we have the audacity and the gall to stand here tonight and take an elderly person who has worked all of his or her life, take them out of a nursing home, and then turn around and give the richest person in this country a tax break, and the richest corporations.

The issue is not whether or not we balance the budget. The issue is how we balance it.

If I have two children, for example, and I have to cut back because I am spending too much, it is almost like telling one child, ''I'm going to deny you a college education because Daddy can't afford it anymore,'' but at the same time I tell the other child, ''I'm going to give you an increase in your allowance.''

That is what we are doing under this budget. We are taking from the poorest people, our children, our elderly, and we are giving money to the richest people in this country, cutting Medicare by $200-some billion and then giving a $245 billion tax break.

From rural Louisiana, $57.4 million in cuts resulting in higher taxes for 372,000 Louisianans. Families with one child, for example. We worked hard the last Congress to bring about something called an earned income tax credit, because we realized that we have to get people off the welfare rolls in this country and put them on payrolls.

We all agree to that. We all know that in order for us to have a country that utilizes the free enterprise system and builds dignity among people, we have to get people off welfare. So what did we do the last Congress? We included in the budget something called an earned income tax credit, because we wanted to give the people who were trying to go to work and make a decent and honest living a tax break. So individuals who have children, and individuals who make $27,000, $30,000 a year, we gave them a tax break because we want to reward them for the work that they do.

What are we doing today in this budget? We take away that tax credit to millions of families, and then we talk about how we want to get people off of welfare. The best way to get a person off of welfare is pay them for the work that they do and give them an opportunity, put value in work. This budget certainly does not do that.

We also, as a result, raise taxes on 12.6 million families with incomes of $30,000 or less. That is what this budget will do; $100 billion in cuts in food stamps and welfare programs.

I know there has been a lot of talk about how we need to downsize the welfare program in this country. I stand before you today, Mr. Speaker, and say in no uncertain terms that we need to downsize and we need to revitalize the welfare program in this country.

You are looking at one Member of Congress who believes that the welfare program in this country is very regressive and it needs to be more progressive. But how do we make welfare more progressive? We make it more progressive, in my opinion, by increasing job training, because many of the people on welfare do not have job skills.

What do we do in this budget? We cut job training programs. Are we serious about revitalizing and reforming welfare in this country? I would think not.

To add insult to injury, we take the child who we want to see off of the streets during the summertime, and the child who we would like to see do something constructive during the summertime, how do we penalize the child in this program? We tell children in this budget, about 4 million of them, that this summer they will not have a summer job.

Those are the kind of problems that we are having, real problems that we are having with this budget. Until we come with a balanced approach, we will never have a balanced budget, because if the philosophy here tonight is to balance the budget by giving the rich more and giving those who can least help and defend themselves less, then we will never come to a balanced budget agreement.

Student loans, for example, cut by $10.2 billion at a time when less kids are taking advantage of college opportunities. Why? Because many of them do not have the financial resources.

So should we stand here tonight and say, OK, let us balance the budget in 7 years; if you want to cut student loans, cut it for the sake of balancing the budget. I would feel a little better if we were not giving a $245 tax break to the richest people in America.

That is why we have an impasse tonight. That is why the Members of this Congress not should but must sit down and talk about how we really can bring about a balanced budget for our children and for our country.

Last, before I yield to a distinguished colleague of mine, I want to talk about the increased interest rates on student loans.

Now when you are in college and you take out a student loan, you have a 6-month grace period. What kind of Congress are we, when we take a grace period away from a college student who just graduated from college and who just took out a student loan and who does not even have a job, for crying out loud?

We tell this college student, ''We are going to balance this budget on your back,'' but yet we want every kid to go to college. We want them off welfare. We want them off the streets in the summertime, but we take away their summer jobs. And we have the audacity to stand on this floor and talk about it is the best thing to do, we have got to balance this budget.

There is nothing wrong with balancing a budget, but it is how we balance it. Do we penalize people who can least help themselves, young college students?

I see that I have been joined by my distinguished friend and colleague from the great State of Illinois. Let me just welcome the gentleman to this august body and welcome him to this U.S. Congress where I have been awaiting his arrival. It is good to have him here.

Mr. Speaker, I yield to my good friend the gentleman from Illinois [Mr. JACKSON] for as much time as he may consume.

Mr. JACKSON of Illinois. I thank the gentleman from Louisiana [Mr. FIELDS] for yielding me time this evening.

We really need to stop kidding the American people. I support a balanced budget. Most Democrats do. But can we project natural disasters for the next 7 years? Can we project hurricanes on the east coast for the next 7 years? Earthquakes on the west coast for the next 7 years? Or floods in the Midwest? Can we project wars present and unseen? Are we making decisions for a Congress yet to be elected severely restricting their ability to set the Nation's priorities as they see fit based on national need?

And so if you like I am tired of hearing Republicans talking about the Federal budget deficit and the debt, those who are primarily responsible for deliberately creating deficits acting like they are actually concerned about them, then maybe you are ready to listen to something real about reducing budget deficits.

How did we get in this mess? David Stockman, Ronald Reagan's Director of Office of Management and Budget, revealed first in the Atlantic Monthly and later in his book that the Republican strategy in 1981 was to deliberately create huge budget deficits and dramatically drive up the national debt as a way of forcing cutbacks in domestic social spending.

For a little bit of perspective. For over 200 years from George Washington to Jimmy Carter, the accumulated national debt was $908 billion. After just 12 years of Reagan and Bush economic policies, huge tax breaks for the rich, originally $750 billion, reduced in 1983 to $600 billion, and massive military spending, $750 billion over 5 years, the debt actually quadrupled to nearly $4 trillion. One expert has estimated that tax cuts enacted since the late 1970's for the richest 1 percent of families cost the Federal treasury $164 billion in 1992.

For example, $84 billion in decreased revenues and $80 billion in interest on the accumulated debt. The Reagan-Bush fiscal policies which on the one hand allowed the rich to pay less for their fair share of taxes, on the other hand forced the Government to borrow from them to finance the debt, a double bonanza for the very wealthiest Americans.

The deficit must be put in perspective. Deficit fixation and attempts to cut the deficit too deeply and too quickly can paralyze efforts to bring about much needed domestic change. It can drag the economy down, increase unemployment, and actually increase the deficit itself.

Borrowing per se is not necessarily bad. Borrowing to buy a house or to fund one's education is different than borrowing to pay off a gambling debt or to buy drugs or to buy alcohol. Therefore, there is an important difference between consumption expenditures and investment expenditures.

Additionally, if one takes out a mortgage on a house and then gets a promotion and a significant salary increase on their job, the mortgage payment actually becomes less burdensome. Therefore, the size of the deficit in and of itself is not a drag on the economy. When business does not expand, it is because of lack of demand, not necessarily because of the budget deficit. Thus if the economy were to become a high-growth, high-wage, full-employment economy, the burden of the deficit would actually decline.

Another argument from the Republicans for deficit reduction is that the deficit pushes up interest rates. During the 1980s, when the deficit shot up, interest rates remained essentially the same. Why? Because there is a much stronger link between Federal Reserve policies and rising interest rates than there are between the deficit and rising interest rates.

Perspective also means seeing the deficit in relationship to the size of the economy. The sum may be large in 1995, but in 1945 due to the unprecedented size of wartime expenditures, the Federal deficit was more than 22 percent of GDP, compared to roughly 5 percent in 1993. A rise in unemployment and the resulting loss of production that often ensues is a far worse drain on the economy than the deficit.

In Germany, for example, with the Weimar government's memory of hyperinflation in the 1920's and high unemployment during the depression of the 1930's—among union members in 1932 it was 44 percent—they chose classic budget deficit reduction policies instead of government spending on public works and an expansion of the money supply. The resulting mass unemployment helped to pave the road to fascism.

Obsession with the budget deficit creates even more tragic deficits. Our deficits are also in rundown infrastructure of our roads, of our bridges, of our airports, of waste disposal facilities and lack of environmental protection. They are also in our failure to combat crime and drugs and in a significant part of a generation growing up semiliterate, in an unending cycle of poverty.

Our deficits are in an educational system increasingly falling behind other systems in the world, and in gaps in child care, health care and inadequate housing of millions of Americans.

We are a Nation of enormous national wealth. We are just tragically suffering from an anemia of national will to do what we know is just.

The gentleman mentioned a few moments ago a mother and her children. If a mother has three children, and two pork chops, she does not conclude that she has one excess child. A mother takes two pork chops and she makes gravy and she expands that meal to take care of three children.

That is what a caring mother should do. It is certainly what caring Government should do.

Mr. FIELDS of Louisiana. Let me just say to the gentleman, he mentioned the 12 years of Republican leadership as relates to how they dealt with the budget and how they dealt with spending. The gentleman makes a very valid point. I think they used to call it voodoo economics.

Basically what took place for 12 years, and one of the reasons, not the only reason, but one of the reasons why we find ourselves in the mess that we are in today is because for 12 years the Republican philosophy was if you give the rich a tax break, then we have something called a trickle-down effect. If you give rich people a tax break, give the corporations a tax break, it will trickle down and create jobs.

What happened was it did not trickle down. The rich just got richer and the poor got poorer and now we find ourselves with this big deficit.

Let me go back to the educational piece, because I think that is a core part of my debate and my resistance in terms of this budget, is because the way we penalize the elderly with Medicare, but also how we penalize people who are trying to better themselves.

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You take the national service program for example, AmeriCorps, a program that you and I both are strong advocates of. We know that there are so many parents in America who are right now caught in the middle. They make a little bit too much money to qualify for government assistance but do not make enough money to send their kids to college.

So we came up with the idea of a national service program so that kids could go to college and earn their way through college, pay their student loans after they finish college by participating in the national service program. They eliminate that program. The issue is not whether or not we balance the budget tonight. The issue is how we balance the budget. Do we have a balanced approach in balancing the budget?

Drug-free schools and communities, the gentleman from Chicago, he knows the problems that we have. He knows about the problems that we have in schools. I recall many times visiting his district as a college student, and we both went from school to school speaking to kids about staying away from drugs and alcohol. This budget eliminates, a cut over half of the drug-free schools and communities money, $466 million; it cuts $266 million, not when drugs in our schools and communities are going down but going up. So those are some of the real problems that Members on our side of the aisle have with this budget agreement.

The other thing I wanted to talk about, and that was the CRA. This budget, if you are a bank, for example, with under $100 million in assets, you do not have to comply with CRA standards. So you are going to have less investment in communities across this Nation as a result of this budget.

There are real problems with this budget. If the gentleman is familiar with the Head Start Program, and I will be happy to yield to the gentleman after I talk about this Head Start Program. Head Start cuts, for example, 135 million in 1996 alone and it freezes funding that would deny 180,000 children the opportunity of Head Start.

I am a product of the Head Start Program. Here again, I take a moment of personal privilege. I do not know how many Members of Congress actually participated in the Head Start Program, but I did. I know what the Head Start Program did for me. Cutting it like we are doing in this budget is wrong.

The summer jobs program. I do not know if the gentleman from Chicago participated in the summer jobs, but I qualified for a summer job when I was going to school. The first time I was able to punch a clock was when I received my first summer job. It taught me personal responsibilities on the job, gave me job training. Every Saturday, every Monday through Friday I had to get up in the morning during the summertime and go to work, taught me job ethic. We wipe it out in this budget.

Mr. JACKSON of Illinois. Let me thank the distinguished gentleman from Louisiana for yielding once again.

During the course of my most recent campaign in the Second Congressional District, I had the privilege of speaking at Bowen High School, around 89th and Commercial on the South Side of Chicago. I was meeting with the principal, Mrs. Alverez in her office. I happened to notice on a mural that was in her office, I saw African Americans and Haitians, male and female, all going to work at a steel mill known as USX, United States Steel. In the middle of this mural was a large furnace. Out of the back of that furnace was coming rail and coming engines and coming bridges and tremendous infrastructure.

Two blocks from Bowen High School is 600 abandoned acres of United States Steel where USX used to be. If you step outside of the principal's office now, you see metal detectors. There are students at Bowen High School wearing uniforms. What are you saying? I am saying that there is a relationship between that mural, between those metal detectors, between the behavior of our children, between the absence of those jobs and the number one growth industry in our country: jails.

We have more public housing, more public housing has been in the form of jails in the last year than it has been in the form of building public housing and affordable housing for the American people, while it costs more for us to incarcerate Americans in jails than it does to put Americans through college and put them back to work.

So, we must not only measure our budget deficit in terms of numbers, which the Republicans so skillfully illustrate on this floor, we must measure our budget deficit in our failure as a nation to reinvest not only in our infrastructure but, most importantly, in our people. When we reinvest in our people, the return on our investment actually plays a role in reducing the deficit.

Mr. FIELDS of Louisiana. Mr. Speaker, I want to talk about the environment, if the gentleman would bear with me just for a moment, because that is another issue that is very important in this budget.

EPA cuts: EPA enforcement alone is cut by 25 percent. To cut EPA enforcement by 25 percent at a time that more companies are polluting and at a time that we need to be more environmentally conscious, not only in the country but in the world. Certainly you can have the best department of environmental quality or environmental protection that you want, but if you do not have the law enforcement officers out there enforcing the law, then what difference does it make? We can pass all the rules and regulations we want in this Congress, but if we do not have the enforcement mechanism to go out and make sure that companies abide by the laws and rules and regulations to make our environment safe, make our water clean, our air clean and our soil clean, then it matters not what kind of legislation we pass—not to mention—safe drinking water and clean water fund, cut by 45 percent.

I mean, almost 50 percent of those dollars are cut. I am talking about moneys that are being cut with no studies, no rhyme or reason, just sitting around the table, saying cut it for the sake of cutting it because we want to give people who make $100,000 and people who make $200,000 a year a tax break. We want to give the wealthiest people in this country a tax break. That, I suggest to you, my friend, is wrong.

I would hope that in the remaining weeks of this year, I would hope that we could sit down and talk about real solutions to a real problem. We have a real problem in this country. Neither you nor I are naive to the extent that we do not realize we a budget problem. I did not create this problem. My colleague certainly did not create it because he just got here. I got here about 3 years ago.

But I want to solve it. I want to be a part of the solution. And in order for us to solve this problem, we have to do it with a clear conscience. We have to sit around the table, and we have to cut some programs that, quite frankly speaking, need to be cut.

I am not standing at this mike, and neither are you, saying, do not cut. Yes, we need to cut. We need to reorganize the way we do business in our country. We want to balance our checkbook. We want to do that. Seven years, 5 years, 10 years, we want to balance it. But we have got to balance it with conscience and we have to balance it in the most appropriate way and not just be punitive in nature.

I mean not just pull seniors out of nursing homes, not just cut people who

fought for this country, the veterans in this country, and close some of their hospitals. Not just take kids' summer jobs, for crying out loud, and taking away a little drug-free schools and communities program that benefits communities and schools. Not snatching milk from babies in the food stamp program and then give it to a big millionaire or a big corporation and then hold a press conference and say we balanced the budget. I think that is the biggest problem. Those are some of the problems that we have with balancing the budget.

If the gentleman wishes me to yield, I will be happy to yield, but I wanted to make those comments.

Mr. JACKSON of Illinois. Mr. Speaker, I just wanted to thank the gentleman once again for yielding.

I would go so far as to say that when we look and compare the Republican method of balancing the budget, they plan to balance the budget in 7 years with deep cuts in Medicare and Medicaid, four times greater than any health cuts in history, deep cuts in education, a rollback obviously in environmental protection, and a tax increase on working families.

The President's balanced budget approach is much different. He balances the budget in 7 years while protecting Medicare, Medicaid, education and the environment and targeting tax relief to the middle class without any new tax increase on working families.

Mr. Speaker, the gentleman is correct. The issue here is about direction. Are we going to balance the budget on the backs of people who are poor and who are defenseless and cannot come and participate in this august body or part of this conversation? Who is asking and who is being asked to forgo what? Students are being asked to forgo interest rates on loans. Seniors are being asked to forgo Medicare.

There are 41 million Americans who have no form of health care at all and are not part of any debate. There are 19 million people who are working part-time jobs and they are being asked to forgo full-time work. There are 8 million homeless people, roughly 8 million homeless people who are being asked to forgo housing. There are youth who are being asked to forgo education. Our cities are being asked to forgo development while we balance this budget.

In my district, if I may take a moment of personal privilege, the cities of Harvey and Phoenix and Posen and Robbins and Dixmoor are being asked to forgo debt forgiveness while we can forgive the debt of Mexico. We can forgive the debt of the Soviet Union and former Eastern Bloc countries, but we cannot forgive the debt of townships in our own districts and in our own country.

There is nothing wrong with balancing the budget. We agreed that that should happen. The only issue is what direction that balanced budget should take.

Mr. FIELDS of Louisiana. Mr. Speaker, I want to thank the gentleman from Chicago. I want to thank him for his time tonight. Again, I welcome the gentleman to this august body. I enjoyed participating in this colloquy with the gentleman and want to thank him once again.

Let me just conclude by saying, we, as Members of this Congress, and as well as the executive branch of Government, we should, we must sit down and talk about balancing this budget and get this train moving again. Let me tell my colleagues, it is almost like a driver of a bus and a mechanic, a bus just breaking down on the side of the highway. And you have got a bunch of people on the bus. And the mechanic and the driver get into a big fight about what to do to get the bus moving again. The people on the bus do not really care about the differences between the driver and the mechanic. They just want to get to their next destination.

The American people really want to get to the next destination. We as grown men and women in this Congress, we must sit down and get this Government moving and open and balance the budget. But we must come to grips with the fact that we will not and we should not do it on the backs of the most defenseless people in this country, the elderly, the poor, and the young. And those people who are in the middle, who are trying to make a living, who are trying to do better, who are benefiting from the earned income tax credit. I would hope and pray that this Congress, this institution with all of its great wisdom, with its infinite wisdom would come to the conclusion that yes, we need to open our Government up. Yes, we need to move our Government forward. Yes, we need to balance our budget, and need to do it in a fair and equitable way.

LEAVE OF ABSENCE

By unanimous consent, on December 15, leave of absence was granted to:

Mr. MCNULTY (at the request of Mr. GEPHARDT) for December 15, after 3 p.m., for personal business.

Mr. STOKES (at the request of Mr. GEPHARDT) for December 15, for official business in the district.

Mr. TOWNS (at the request of Mr. GEPHARDT) for December 15, for official business in the district.

By unanimous consent, on December 15, leave of absence was granted to:

Mr. YOUNG of Florida (at the request of Mr. ARMEY) for December 15, for official business.

Mr. LIGHTFOOT (at the request of Mr. ARMEY) for December 15, for a family emergency.

Mr. GUNDERSON (at the request of Mr. ARMEY) for December 15 after 1 p.m., for personal reasons.

By unanimous consent, on December 15, leave of absence was granted to:

Ms. HARMAN (at the request of Mr. GEPHARDT) for December 15 after 5 p.m., for official business.

Mr. EDWARDS (at the request of Mr. GEPHARDT) for today, for the birth of his son.

By unanimous consent, on December 15, leave of absence was granted to:

Ms. ROS-LEHTINEN (at the request of Mr. ARMEY) for today, on account of a death in the family.

Ms. MOLINARI (at the request of Mr. ARMEY) for today, for medical reasons.

Mrs. FOWLER (at the request of Mr. ARMEY) for today, for official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. PALLONE) to revise and extend their remarks and include extraneous material:)

Mr. POSHARD, for 5 minutes, today.

Mrs. CLAYTON, for 5 minutes, today.

Mr. OLVER, for 5 minutes, today.

Mr. TAYLOR of Mississippi, for 5 minutes, today.

Mr. HINCHEY, for 5 minutes, today.

(The following Members (at the request of Mr. BEREUTER) to revise and extend their remarks and include extraneous material:)

Mr. SHADEGG, for 5 minutes, today.

Mr. HORN, for 5 minutes, today.

Mr. HOKE, for 5 minutes, today.

Mr. LEWIS of Kentucky, for 5 minutes, today.

Mr. KINGSTON, for 5 minutes, today.

Mr. BEREUTER, for 5 minutes, today

Mr. DORNAN, for 5 minutes, today.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1332. An act to clarify the application of certain Federal criminal laws to territories, possessions, and commonwealths, and for other purposes; to the Committee on the Judiciary.

ENROLLED BILLS SIGNED

Mr. THOMAS, from the Committee on House Oversight, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1747. An act to amend the Public Health Service Act to permanently extend and clarify malpractice coverage for health centers, and for other purposes;

H.R. 1977. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1996, and for other purposes;

H.R. 2099. An act making appropriations for the Department of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1996, and for other purposes; and

H.R. 2336. An act to amend the Doug Barnard, Jr. 1996 Atlanta Centennial Olympic Games Commemorative Coin Act, and for other purposes.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1060. An act to provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Oversight, reported that that committee did on the following dates present to the President, for his approval, bills of the House of the following titles:

On December 14, 1995:

H.R. 325. An act to amend the Clean Air Act to provide for an optional provision for the reduction of work-related vehicle trips and miles travelled in ozone nonattainment areas designated as severe, and for other purposes.

H.R. 1240. An act to combat crime by enhancing the penalties for certain sexual crimes against children.

On December 16, 1995:

H.R. 1977. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1996, and for other purposes.

H.R. 2099. An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1996, and for other purposes.

H.R. 2336. An act to amend the Doug Barnard, Jr. 1996 Atlanta Centennial Olympic Games Commemorative Coin Act, and for other purposes.

H.R. 1747. An act to amend the Public Health Service Act permanently extend and clarify malpractice coverage for health centers, and for other purposes.

ADJOURNMENT

Mr. FIELDS of Louisiana. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 13 minutes p.m.) under its previous order, the House adjourned until Tuesday, December 19, 1995, at 9 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1847. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ROBERTS: Committee on Agriculture. H.R. 2029. A bill to amend the Farm Credit Act of 1971 to provide regulatory relief; with amendments (Rept. 104–421). Referred to the Committee of the Whole House on the State of the Union.

Mr. SHUSTER: Committee of Conference. Conference report on H.R. 2539. A bill 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 (Rept. 104–422). Ordered to be printed.

Mr. SOLOMON: Committee on Rules. House Resolution 309. Resolution providing for consideration of the concurrent resolution (H. Con. Res. 122) setting forth a revised congressional budget for the U.S. Government for the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 (Rept. 104–423). Referred to the House Calendar.

Mr. GOSS: Committee on Rules. House Resolution 310. Resolution expediting the commencement of committee hearings during the remainder of the first session of the 104th Congress (Rept. 104–424). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FIELDS of Louisiana:

H.R. 2800. A bill to amend the Internal Revenue Code of 1986 to impose a 5-percent tax on all wagering and to use the revenues from such tax to enhance funding for public elementary and secondary education, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FRELINGHUYSEN:

H.R. 2801. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide that the U.S. Army Corps of Engineers perform contract oversight of fund financed remedial actions under that act; to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LONGLEY (for himself, Mr. ENGLISH of Pennsylvania, Mrs. CHENOWETH, Mr. NETHERCUTT, Mr. METCALF, and Mr. COOLEY):

H.R. 2802. A bill to impose temporarily a 25-percent duty on imports of certain Canadian wood and lumber products, to require the administering authority to initiate an investigation under title VII of the Tariff Act of 1930 with respect to such products, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MCCOLLUM (for himself, Mr. SCHUMER, Mr. COBLE, Mr. HEINEMAN, Mr. SCHIFF, Mr. DURBIN, Mr. BRYANT of Tennessee, and Ms. LOFGREN):

H.R. 2803. A bill to amend the anti-car theft provisions of title 49, United States Code to increase the utility of motor vehicle title information to State and Federal law enforcement officials, and for other purposes; to the Committee on the Judiciary.

By Mr. SCHUMER:

H.R. 2804. A bill to amend the auto theft provisions of title 49, United States Code, to add air bag modules to the list of major auto parts protected under such provisions; to the Committee on the Judiciary.

By Mr. STARK (for himself and Mr. MATSUI):

H.R. 2805. A bill to amend title XVIII of the Social Security Act to reduce the amount of the premium charged for enrollment in part A of the Medicare Program for individuals 80 years of age or older; to the Committee on Ways and Means.

By Mr. TORKILDSEN.

H.R. 2806. A bill to amend the Small Business Investment Act of 1958 to create the Venture Capital Marketing Association, to transfer certain functions of the Small Business Administration to the Association, and for other purposes; to the Committee on Small Business, and in addition to the Committee on Commerce, and Banking and Financial Services, for a period to be subsequently determined by the Speaker in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WATTS of Oklahoma (for himself, Ms. MOLINARI, Mr. PAYNE of New Jersey, and Mr. TALENT):

H.R. 2807. A bill to consolidate Federal youth prevention and youth development programs and create a new process and structure for providing Federal assistance for these programs, and for other purposes; to the Committee on Economic and Educational Opportunities, and in addition to the Committees on the Judiciary, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KASICH (for himself, Mr. CONDIT, and Mr. HOBSON):

H.J. Res. 132. Joint resolution affirming that budget negotiations shall be based on the most recent technical and economic assumptions of the Congressional Budget Office and shall achieve a balanced budget by fiscal year 2002 based on those assumptions.

By Mr. WALSH:

H.J. Res. 133. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes; to the Committee on Appropriations.

By Mr. KASICH (by request):

H. Con. Res. 122. Concurrent resolution setting forth the congressional budget for U.S. Government for the fiscal years 1996, 1997, 1998, 1999, 2000. 2001, and 2002; to the Committee on the Budget.

MEMORIALS

Under clause 4 of rule XXII.

184. The SPEAKER presented a memorial of the House of Representatives of the State of Oklahoma, relative to U.S. military forces and the United Nations; memorializing Congress to cease certain activities concerning the United Nations; and directing distribution. Referred to the Committee on International Relations.

ADDITONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 835: Mr. SISISKY.
H.R. 911: Mr. BARCIA of Michigan.
H.R. 1023: Mr. TAYLOR of Mississippi.

H.R. 1057: Mr. DOYLE, Mr. INGLIS of South Carolina, Mr. HALL of Ohio, Mr. FOX, Mr. VENTO, Mr. SANDERS, Ms. WOOLSEY, and Mr. MFUME.

H.R. 1202: Mr. HOBSON and Mrs. JOHNSON of Connecticut.

H.R. 1406: Mr. HEFNER.

H.R. 1687: Mr. GILCHREST, Mr. BAKER of California, and Mr. COYNE.

H.R. 1883: Mr. SENSENBRENNER.

H.R. 1948: Mr. MARKEY.

H.R. 2011: Mr. WILSON, Mr. BARRETT of Wisconsin, Ms. LOFGREN, and Mr. KLECZKA.

H.R. 2101: Mrs. LOWEY.

H.R. 2244: Mr. BLILEY.

H.R. 2551: Mr. DURBIN and Mrs. CLAYTON.

H.R. 2579: Mr. CLINGER.

H.R. 2651: Mr. STEARNS, Mr. MARTINEZ, Mr. TAYLOR of North Carolina, Mr. COOLEY, and Mr. SOUDER.

H.R. 2657: Mr. FLAKE.

H.R. 2712: Mr. CUNNINGHAM.

H.R. 2713: Mr. CALVERT, Mr. BISHOP, and Mr. WATTS of Oklahoma.

H.R. 2723: Mr. LIVINGSTON and Mr. PETRI.

H.R. 2740: Mr. GILCHREST and Mr. KLUG.

H.R. 2772: Mr. LAZIO of New York.

H. Con. Res. 102: Mr. SHAYS, Mr. GONZALEZ, and Mr. DE LA GARZA.