

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

RAILROAD ANTITRUST ENFORCEMENT ACT

Mr. KOHL. Mr. President, I rise to speak about an agreement we have reached with Senator ROCKEFELLER regarding today's planned consideration of the Railroad Antitrust Enforcement Act. Before describing our agreement, I would like to say a few words about this legislation.

We believe this legislation is essential to restoring competition to the Nation's crucial freight railroad sector. Freight railroads are essential to shipping a myriad of vital goods—everything from coal used to generate electricity to grain used for basic foodstuffs. But for decades, the freight railroads have been insulated from the normal rules of competition followed by almost all other parts of our economy because of their outmoded and unwarranted antitrust exemptions. Our legislation is designed to eliminate the obsolete antitrust exemptions that protect freight railroads from competition.

This bipartisan legislation has 11 cosponsors, including members of both the Judiciary Committee and Commerce Committee, and was reported out of the Judiciary Committee on a unanimous 14-to-0 vote in March.

The railroad industry's obsolete antitrust exemptions resulted in higher prices to millions of consumers every day. Consolidation in the railroad industry in recent years has resulted in only four class I railroads providing nearly 90 percent of the Nation's freight rail transportation. Three decades ago, by contrast, there were 42 class I railroads. A 2006 GAO report found shippers in many geographic areas "may be paying excessive rates due to a lack of competition in these markets."

The ill-advised effects of these consolidations are exemplified by the high prices paid by captive shippers; namely, industries served by only one railroad. A recent study by the Consumer Federation of America found that rail shipping rates for captive shippers are \$3 billion higher than they would be if the market were competitive. These unjustified cost increases cause consumers to suffer higher electricity bills because a utility must pay for the high cost of transporting coal, results in higher prices for goods produced by manufacturers who rely on railroads to transport raw materials, reduces earnings for American farmers who ship their products by rail, and raises food prices paid by consumers.

Repeal of the railroad antitrust exemption is supported by the attorneys general of 20 States and a wide range of consumer organizations and leading industry trade organizations, including the American Public Power Association, the American Chemistry Council, the National Farmers Union, the

American Corn Growers Association, and the National Industrial Transportation League, as well as many more.

Once their outmoded antitrust exemptions are removed, railroads will be subject to the same laws as the rest of the economy. Government antitrust enforcers will finally have the tools to prevent anticompetitive transactions and practices by railroads. Likewise, private parties will be able to utilize the antitrust laws to deter anticompetitive conduct and to seek redress for their grievances. On the Antitrust Subcommittee, we have seen that in industry after industry, vigorous application of our Nation's antitrust laws is the best way to eliminate barriers to competition, to end monopolistic behavior, and to keep prices low and quality of service high. The railroad industry is no different. All those who rely on railroads to ship their products deserve the full application of the antitrust laws to end the anticompetitive abuses all too prevalent in this industry today.

That is why I am so pleased by the agreement that I have reached today with Senator ROCKEFELLER. He has agreed to include this necessary repeal of the railroads' unwarranted antitrust exemption in his comprehensive bill to reform the freight rail industry and the Surface Transportation Board when that bill is introduced in the coming weeks. Senator ROCKEFELLER has also agreed that his comprehensive rail reform bill will address a specific railroad practice that is of great concern to me—a practice known as paper barriers. He has pledged that his legislation will give the STB enhanced power to address this issue so that shippers are not denied the benefit of competition in relation to these arrangements. With this agreement, we have avoided a potentially divisive floor debate and we have the solid support of the distinguished chairman of the Commerce Committee for repealing the antitrust exemption and addressing paper barriers.

I thank my friend from West Virginia for his compromise as well as his support for the need to reform the freight rail system in the United States in the interest of all parties, including rail shippers and consumers.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF REGINA McCARTHY

Mrs. BOXER. Mr. President, as chairman of the Environment and Public Works Committee, I look forward to

the Senate's vote this morning on the confirmation of Regina McCarthy to be Assistant Administrator of the Office of Air and Radiation at the Environmental Protection Agency. I am happy to report to the Senate that my ranking member, Senator INHOFE, supports her as well, and he wanted to make that point.

The Assistant Administrator for Air and Radiation plays a crucial role in developing and improving programs that better protect public health and the environment, and she also will help address critical threats to our families and our communities. Regina McCarthy is very qualified to be Assistant Administrator. She comes to this position with a stellar record of achievement. During her hearing before the EPW, she impressed us all with her deep firsthand knowledge of clean air policy. She has three decades of experience in public service. She has a unique record of accomplishments in addressing air pollution at the State level in Massachusetts as well as Connecticut.

Here is the thing: She will bring a spirit of bipartisanship to this critical EPA office that is focused on protecting public health and the environment. In Massachusetts, Regina McCarthy served under Governors Cellucci and Romney, both Republicans. She served as Assistant Secretary for Policy at the Office of Environmental Protection and Deputy Secretary of the Office of Commonwealth Development. In 2005, Republican Governor Jodi Rell of Connecticut—another Republican—appointed Regina to be Commissioner of Connecticut's Department of Environment. So Regina's ability to work with people on both sides of the aisle is clear. She wants to solve the serious air pollution problems facing our families and communities, and I believe her experience in a bipartisan world will greatly help her.

California faces some of the most dangerous air pollution in the country. My State is a magnificent State, but it has its problems because we have the busiest ports in the Nation. We actually are responsible for taking care of 40 percent of the Nation's imports, and those goods are brought into our ports by ships that, unfortunately, still use—many of them—a highly polluting fuel called bunker fuel. And when we look at the rates of cancer across this Nation, you see clusters of cancer at all of our ports, and a lot certainly at our ports in California.

I worry very much about those families. We have been able to work in a bipartisan way—although not quickly enough, in my view—to make sure that these ships get away from this bunker fuel, and actually we are working very hard with the Obama administration, as we did with the Bush administration, on international treaties to move us away from this very polluting bunker fuel. So we are making great progress there, but we still have a lot of the trucks at our ports. We are working closely with, in this case, Los