104TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
104–311

ICC TERMINATION ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ON

H.R. 2539

TOGETHER WITH

MINORITY AND ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

NOVEMBER 6, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

104TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
104–311

ICC TERMINATION ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ON

H.R. 2539

TOGETHER WITH

MINORITY AND ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

NOVEMBER 6, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

20–738 WASHINGTON : 1995

ICC TERMINATION ACT OF 1995

104TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 104–311

ICC TERMINATION ACT OF 1995

NOVEMBER 6, 1995.—Committed to the Committee on the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 2539]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred 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 considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "ICC Termination Act of 1995".

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
"103. JURISDICTION	10301
"105. RATES	10501
"107. LICENSING	10701
"109. OPERATIONS	10901
"111. FINANCE	11101
"113. FEDERAL-STATE RELATIONS	11301
"115. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES	11501
"117. CIVIL AND CRIMINAL PENALTIES	11701

"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
"145. FEDERAL-STATE RELATIONS	14501
"147. ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES	14701
"149. CIVIL AND CRIMINAL PENALTIES	14901

"PART A—RAIL

"CHAPTER 101—GENERAL PROVISIONS

"Sec.
"10101. Rail transportation policy.
"10102. Definitions.
"10103. Remedies are exclusive.

"§ 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 Panel;

"(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 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; and

"(14) to encourage and promote energy conservation.

"§ 10102. Definitions

"In this part—

"(1) '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;

"(2) '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;

"(3) 'Panel' means the Transportation Adjudication Panel;

"(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 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, fare, 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, 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.

"§10103. Remedies are exclusive

"Except as otherwise provided in this part, the remedies provided under this part are exclusive and preempt the remedies provided under Federal or State law.

"CHAPTER 103—JURISDICTION

"Sec.
"10301. General jurisdiction.
"10302. Authority to exempt rail carrier transportation.

"§ 10301. General jurisdiction

"(a)(1) Subject to this chapter and other law, the Panel 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;

"(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 Panel 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.

"(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 Panel 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 Panel has jurisdiction under sections 10902 and 10903 of this title over mass transportation provided by a local governmental authority.

"§ 10302. Authority to exempt rail carrier transportation

"(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Panel under this part, the Panel, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Panel finds that the application 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 of the provision is not needed to protect shippers from the abuse of market power.

"(b) The Panel 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 Panel shall, within 90 days after receipt of any such application, determine whether to begin an appropriate proceeding. If the Panel decides not to begin a 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 one year after it is begun.

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

"(d) The Panel may revoke an exemption, to the extent it specifies, when it finds that application 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 Panel shall, within 90 days after receipt of a request for revocation under this subsection, determine whether to begin an appropriate proceeding. If the Panel decides not to begin a proceeding, 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 one year 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 11506 of this title. Nothing in this subsection or section 11506 of this title shall prevent rail carriers from offering alternative terms nor give the Panel the authority to require any specific level of rates or services based upon the provisions of section 11506 of this title.

"(f) The Panel may exercise its authority under this section to exempt transportation that is provided by a rail carrier.

"(g) The Panel 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 105—RATES

"SUBCHAPTER I—GENERAL AUTHORITY

"Sec.

"10501. Standards for rates, classifications, through routes, rules, and practices.
"10502. Authority for rail carriers to establish rates, classifications, rules, and practices.
"10503. Authority for rail carriers to establish through routes.
"10504. Authority and criteria: rates, classifications, rules, and practices prescribed by Panel.

"10505. Authority: through routes, joint classifications, rates, and divisions prescribed by Panel.
"10506. Rate agreements: exemption from antitrust laws.
"10507. Determination of market dominance in rail rate proceedings.
"10508. Inflation-based rate increases.
"10509. Contracts.

"SUBCHAPTER II—SPECIAL CIRCUMSTANCES

"10521. Government traffic.
"10522. Emergency rates.
"10523. Car utilization.

"SUBCHAPTER III—LIMITATIONS

"10541. Prohibitions against discrimination by rail carriers.
"10542. Facilities for interchange of traffic.
"10543. Continuous carriage of freight.
"10544. Transportation services or facilities furnished by shipper.
"10545. Demurrage charges.
"10546. Designation of certain routes by shippers.

"SUBCHAPTER I—GENERAL AUTHORITY

"§ 10501. 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 Panel 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 Panel 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 transporation subject to the jurisdiction of the Panel under this part may establish any rate for transportation or other service provided by the rail carrier.

"(d)(1) If the Panel determines, under section 10507 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 Panel shall recognize the policy of this part that rail carriers shall earn adequate revenues, as established by the Panel under section 10504(a)(2) of this title.

"(3) The Panel shall, within one year after the date of the enactment of this paragraph, complete the pending Interstate Commerce Commission non-coal rate guidelines proceeding to establish simplified and expedited procedures for the determination of rate reasonableness cases in which a presentation of constrained market pricing evidence is impractical.

"§ 10502. Authority for rail carriers to establish rates, classifications, rules, and practices

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

"(1) rates, including 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.

"§ 10503. Authority for rail carriers to establish through routes

"Rail carriers providing transportation subject to the jurisdiction of the Panel under this part shall establish through routes with each other, 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.

"§ 10504. Authority and criteria: rates, classifications, rules, and practices prescribed by Panel

"(a)(1) When the Panel, after a full hearing, decides that a rate charged or collected by a rail carrier for transportation subject to the jurisdiction of the Panel under this part, or that a classification, rule, or practice of that carrier does or will violate this part, the Panel may prescribe the maximum rate, classification, rule, or practice to be followed. The Panel 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 Panel.

"(2) The Panel 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 Panel 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 Panel shall annually determine which rail carriers are earning adequate revenues.

"(b) The Panel may begin a proceeding under this section on its own initiative or on complaint. A complaint under subsection (a) of this section must be made under section 11501 of this title, but the proceeding may also be in extension of a complaint pending before the Panel.

"§ 10505. Authority: through routes, joint classifications, rates, and divisions prescribed by Panel

"(a)(1) The Panel 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 Panel under this part.

"(2) The Panel 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 sections 10541, 10542, or 11101 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 Panel decides that the proposed through route is needed to provide adequate, and more efficient or economic, transportation.

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

"(b) The Panel 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 10503 of this title, or under a decision of the Panel under subsection (a) of this section, does or will violate section 10501 of this title.

"(c) If a division of a joint rate prescribed under a decision of the Panel is later found to violate section 10501 of this title, the Panel 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 Panel decides is justified. The Panel may make a decision under this subsection effective as part of its original decision.

"§ 10506. 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 Panel shall by regulation prescribe.

"(2)(A) A rail carrier providing transportation subject to the jurisdiction of the Panel 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 Panel for approval of that agreement under this subsection. The Panel 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 Panel approves the agreement, it may be made and carried out under its terms and under the conditions required by the Panel, 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 Panel 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 Panel may approve an agreement under subparagraph (A) of this paragraph only when the rail carriers applying for approval file a verified statement with the Panel. 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 Panel 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 Panel 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 sub-

mitted to the Panel 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 Panel 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 Panel 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 Panel 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 Panel under this part, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Panel for approval of that agreement under this paragraph. The Panel 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 Panel approves the agreement, it may be made and carried out under its terms and under the terms required by the Panel, 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 Panel 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 Panel 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 Panel. The Panel 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 Panel.

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

"(c) The Panel 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 Panel 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 Panel may begin a proceeding under this section on its own initiative or on application. Action of the Panel 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) The Panel shall review each agreement approved under subsection (a) of this section periodically, but at least once every 3 years—

"(1) to determine whether the agreement or an organization established or continued under one of those agreements still complies with the requirements of that subsection and the public interest; and

"(2) to evaluate the success and effect of that agreement or organization on the consuming public and the national rail freight transportation system.

If the Panel finds that an agreement or organization does not conform to the requirements of that subsection, it shall end or suspend its approval.

"(f)(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 Panel 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 Panel under this subsection shall be published and made available to the public under section 552(a) of title 5.

"§ 10507. 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 Panel under this part is challenged as being unreasonably high, the Panel shall determine, within 90 days after the start of a proceeding, whether the rail carrier proposing the rate has market dominance over the transportation to which the rate applies. The Panel may make that determination on its own initiative or on complaint. A finding by the Panel 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 Panel or set aside by a court of competent jurisdiction.

"(c) When the Panel 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 Panel 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 Class I rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Panel's Rail Form A cost finding methodology (or an alternative methodology adopted by the Panel 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 Panel. 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 Panel shall prescribe.

"(2) A finding by the Panel 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.

"§ 10508. Inflation-based rate increases

"(a) The Panel may, on a quarterly basis and consistent with the rail transportation policy set forth in section 10101 of this title, prescribe a percentage rate index for rail carriers in order to compensate for inflationary cost increases. Such percentage rate index may be applicable on an industry-wide, territory-wide, or carrier-by-carrier basis.

"(b) For purposes of this section, a percentage rate index may permit rate increases within a specified range to allow carriers to recover a total revenue increase specified by the Panel as necessary to compensate for inflationary cost increases.

"(c) The Panel 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 Panel, with appropriate adjustments to reflect the changing

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.

"§ 10509. Contracts

"(a) One or more rail carriers providing transportation subject to the jurisdiction of the Panel 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 Panel 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.

"(d) 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.

"SUBCHAPTER II—SPECIAL CIRCUMSTANCES

"§ 10521. Government traffic

"A rail 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 rail carrier lawfully operating in the area where the transportation would be provided.

"§ 10522. Emergency rates

"(a) The Panel may authorize a rail carrier providing transportation or service subject to its jurisdiction under this part to give reduced rates for service and transportation of property to or from an area in the United States to provide relief during emergencies. When the Panel takes action under this subsection, it must—

"(1) define the area of the United States in which the reduced rates will apply;

"(2) specify the period during which the reduced rates are to be in effect; and

"(3) define the class of persons entitled to the reduced rates.

"(b) The Panel may specify those persons entitled to reduced rates by reference to those persons designated as being in need of relief by the United States Government or by a State government authorized to assist in providing relief during the emergency. The Panel may act under this section without regard to subchapter II of chapter 5 of title 5.

"§ 10523. 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 Panel shall facilitate development of such charges so as to increase the utilization of equipment.

"SUBCHAPTER III—LIMITATIONS

"§ 10541. Prohibitions against discrimination by rail carriers

"(a)(1) A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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 10509 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.

"§ 10542. Facilities for interchange of traffic

"A rail carrier providing transportation subject to the jurisdiction of the Panel 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.

"§ 10543. Continuous carriage of freight

"A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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.

"§ 10544. Transportation services or facilities furnished by shipper

"A rail carrier providing transportation or service subject to the jurisdiction of the Panel under this part may publish 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 Panel 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 Panel may begin a proceeding under this section on its own initiative or on application.

"§ 10545. Demurrage charges

"A rail carrier providing transportation subject to the jurisdiction of the Panel 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.

"§ 10546. 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 Panel 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 Panel may prescribe exceptions to the authority of a person to direct the movement of traffic under subsection (a) of this section.

"CHAPTER 107—LICENSING

"Sec.
"10701. Authorizing construction and operation of railroad lines.
"10702. Finance and construction transactions by Class II and Class III rail carriers and noncarriers.
"10703. Filing and procedure for notice of intent to abandon or discontinue.
"10704. Offers to purchase to avoid abandonment and discontinuance.
"10705. Offering abandoned rail properties for sale for public purposes.
"10706. Exception.

"§ 10701. Authorizing construction and operation of railroad lines

"(a) A rail carrier providing transportation subject to the jurisdiction of the Panel under this part may—

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

"(2) construct an additional railroad line;

"(3) acquire or operate an extended or additional railroad line; or

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

only if the Panel 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 Panel shall give reasonable public notice of the beginning of such proceeding.

"(c) The Panel shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Panel 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 the Panel finds necessary in the public interest.

"(d)(1) When a certificate has been issued by the Panel under this section or section 10702 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 Panel for determination. The Panel shall make a determination under this paragraph within 90 days after the dispute is submitted for determination.

"(e) The Panel may require any rail carrier proposing both to construct and operate a new railroad line pursuant to this section to provide a fair and equitable arrangement for the protection of the interests of railroad employees who may be affected thereby no less protective of and beneficial to the interests of such employees than those established pursuant to section 11126 of this title.

"(f) Subsections (a), (b), (c), and (e) of this section shall only apply to Class I rail carriers.

"§ 10702. Finance and construction transactions by Class II and Class III rail carriers and noncarriers

"(a)(1) A Class II or Class III (as defined by the Panel) rail carrier providing transportation subject to the jurisdiction of the Panel under this part, or a noncarrier, may—

"(A) construct an extension of any of its railroad lines;

"(B) construct an additional railroad line; or

"(C) acquire or operate a railroad line,

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

"(2) A certificate issued by the Panel under subsection (c) shall also be required for—

"(A) a Class II or Class III rail carrier providing transportation subject to the jurisdiction of the Panel under this part, or a noncarrier to provide transportation over, or by means of, a railroad line by trackage rights, lease, or joint ownership or joint use of the railroad line (and terminals incidental thereto);

"(B) a consolidation or merger of the properties or franchises of at least 2 Class II or Class III rail carriers into one corporation for the ownership, management, and operation of the previously separately owned properties;

"(C) the acquisition of control of a Class II or Class III rail carrier by one or more Class II or Class III rail carriers;

"(D) the acquisition of control of at least 2 Class II or Class III rail carriers by a person that is not a rail carrier; and

"(E) the acquisition of control of a Class II or Class III rail carrier by a person that is not a rail carrier but that controls at least one Class II or Class III rail carrier.

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

"(c) The Panel shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Panel finds that such activities are inconsistent with the public convenience and necessity because—

"(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.

Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions the Panel finds necessary in the public interest.

"(d) When a person is involved in a transaction for which approval is sought under this section, the Panel shall require such person to protect the interest of affected employees to an extent equal to the protection required under sections 2 through 5 of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101–2104).

"(e) The authority of the Panel over transactions described in subsection (a)(2) is exclusive. A rail carrier or corporation participating in or resulting from such a transaction 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 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.

"§ 10703. Filing and procedure for notice of intent to abandon or discontinue

"(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Panel 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 a notice of intent relating thereto with the Panel. 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 Panel under this part files a notice of intent, the notice 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 Panel on the future of the rail line; and

"(C)(i) a statement that the line is available for sale in accordance with section 10704 of this title, (ii) a statement that the rail carrier will promptly provide to each interested party an estimate of the minimum purchase price, calculated in accordance with section 10704 of this title and (iii) the name and business address of the person who is authorized to discuss sale terms for the rail carrier.

"(3) The rail carrier shall—

"(A) send by certified mail a copy of the notice of intent 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 Panel) of the railroad line during the 12 months preceding the filing of the notice of intent; and

"(E) attach to the notice filed with the Panel 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 notice of intent is filed.

"(b)(1) Except as provided in paragraph (2) or subsection (d), abandonment and discontinuance may occur as provided in section 10704.

"(2) If, after considering the scope of an abandonment or discontinuance proposed in a notice of intent filed under this section, the Panel considers it necessary, to improve the viability of the lines included within the proposed abandonment or discontinuance for possible sale or transfer and continued operation, and to enhance competitive alternatives in the event of such sale or transfer, the Panel may require the filing of a new notice of intent which enlarges the scope of the proposed abandonment or discontinuance or provides for appropriate trackage rights.

"(3) The Panel 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 11126 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 Panel. 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 Panel 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 a notice of intent to abandon or discontinue under subsection (a) of this section.

"(d) The Panel may disapprove a proposed abandonment or discontinuance if the Panel finds it inconsistent with the public convenience and necessity.

"§ 10704. Offers to purchase to avoid abandonment and discontinuance

"(a) Any rail carrier which has filed a notice of intent to abandon or discontinue shall provide promptly to a party considering an offer to purchase and shall provide concurrently to the Panel—

"(1) a statement of the minimum purchase price required;

"(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 commercial potential of the railroad line; and

"(4) any other information that the Panel considers necessary to allow a potential offeror to calculate an adequate purchase offer.

"(b) Within 6 months after a notice of intent is filed under section 10703, any person may offer to purchase the railroad line that is the subject of such notice of intent. Such offer shall be filed concurrently with the Panel. If the offer to purchase is less than the minimum purchase price stated pursuant to subsection (a)(1), the offer shall explain the basis of the disparity, and the manner in which the offer is calculated.

"(c)(1) Unless the Panel, within 15 days after the expiration of the 6-month period described in subsection (b), finds that one or more financially responsible persons (including a governmental authority) have offered to purchase 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 10703.

"(2) If the Panel finds that such an offer or offers to purchase have 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 sale of the line; or

"(B) the conditions and amount of compensation are established under subsection (e).

"(d) Except as provided in subsection (e)(3), if the rail carrier and a financially responsible person (including a governmental authority) fail to agree on the amount or terms of the purchase, either party may, within 30 days after the offer is made, request that the Panel establish the conditions and amount of compensation.

"(e)(1) Whenever the Panel is requested to establish the conditions and amount of compensation under this section—

"(A) the Panel shall render its decision within 30 days;

"(B) the Panel shall determine the price and other terms of sale, except that in no case shall the Panel 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).

"(2) The decision of the Panel shall be binding on both parties, except that the person who has offered to purchase the line may withdraw his offer within 10 days of the Panel'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 purchase, it shall select the offeror with whom it wishes to transact business, and complete the sale agreement, or request that the Panel establish the conditions and amount of compensation before the 40th day after the expiration of the 6-month period described in subsection (b). If no agreement on sale is reached within such 40-day period and the Panel has not been requested to establish the conditions and amount of compensation, any other offeror whose offer was made within the 6-month period described in subsection (b) may request that the Panel establish the conditions and amount of compensation. If the Panel has established the conditions and amount of compensation, and the original offer has been withdrawn, any other offeror whose offer was made within the 6-month period described in subsection (b) may accept the Panel's decision within 20 days after such decision, and the Panel shall require the carrier to enter into a sale agreement with such offeror, if such sale agreement incorporates the Panel's decision.

"(4) 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.

"(f) Upon abandonment of a railroad line under this section, the obligation of the rail carrier abandoning the line to provide transportation on that line, as required by section 10901(a), is extinguished.

"§ 10705. Offering abandoned rail properties for sale for public purposes

"When a rail carrier files a notice of intent to abandon or discontinue under section 10703, the Panel 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 Panel 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 Panel. 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.

"§ 10706. Exception

"Notwithstanding section 10701 and subchapter II of chapter 111 of this title, and without the approval of the Panel, a rail carrier providing transportation subject to the jurisdiction of the Panel under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

"CHAPTER 109—OPERATIONS

"SUBCHAPTER I—GENERAL REQUIREMENTS

"Sec.
"10901. Providing transportation, service, and rates.
"10902. Use of terminal facilities.
"10903. Switch connections and tracks.

"SUBCHAPTER II—CAR SERVICE

"10921. Criteria.
"10922. Compensation and practice.
"10923. Rerouting traffic on failure of rail carrier to serve the public.
"10924. War emergencies; embargoes imposed by carriers.

"SUBCHAPTER III—REPORTS AND RECORDS

"10941. Definitions.
"10942. Uniform accounting system.
"10943. Depreciation charges.
"10944. Records: form; inspection; preservation.
"10945. Reports by rail carriers, lessors, and associations.

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"10961. Implementation of cost accounting principles.
"10962. Rail carrier cost accounting system.
"10963. Cost availability.
"10964. Accounting and cost reporting.

"SUBCHAPTER I—GENERAL REQUIREMENTS

"§ 10901. Providing transportation, service, and rates

"(a) A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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 10509 of this title before responding to reasonable requests for service.

"(b) A rail carrier shall also provide to any person, on request, rates and other service terms. The response by a rail carrier to a request for 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 written notice is provided in accordance with subsection (d) to—

"(1) any person who has requested such rates or terms under subsection (b); and

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

"(d) The Panel shall, by regulation, establish rules to implement this section, including appropriate periods of notice.

"§ 10902. Use of terminal facilities

"(a) The Panel 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 Panel under this part, to be used by another rail carrier if the Panel 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 Panel 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 Panel 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 Panel may establish such conditions and compensation.

"(2) The Panel 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 Panel shall complete any proceeding under subsection (a) or (b) within 180 days after the filing of the request for relief.

"§ 10903. 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 Panel 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 Panel under section 11501 of this title. The Panel shall investigate the complaint and decide the safety, practicability, justification, and compensation to be paid for the connection. The Panel may direct the rail carrier to comply with subsection (a) of this section only after a full hearing.

"SUBCHAPTER II—CAR SERVICE

"§ 10921. Criteria

"(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Panel under this part shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Panel may require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate car service if the Panel decides that the rail carrier has materially failed to furnish that service. The Panel may begin a proceeding under this paragraph when an interested person files an application with it. The Panel 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 Panel may require a rail carrier to file its car service rules with the Panel.

"(b) The Panel may designate and appoint agents and agencies to make and carry out its directions related to car service and matters under sections 10923 and 10924(a)(1) of this title.

"§ 10922. Compensation and practice

"(a) The regulations of the Panel 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 Panel 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.

"§ 10923. Rerouting traffic on failure of rail carrier to serve the public

"(a) When the Panel considers that a rail carrier providing transportation subject to the jurisdiction of the Panel under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Panel may direct the handling, routing, and movement of the traffic of that rail carrier and its distribution over other railroad lines to promote commerce and service to the public. Subject to subsection (b)(2) of this section, the rail carriers may establish the terms of compensation between themselves.

"(b)(1) Except as provided in paragraph (2) of this subsection, the Panel may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5.

"(2) When the rail carriers do not agree on the terms of compensation under this section, the Panel may establish the terms for them in a later proceeding.

"(c) When there is a shortage of equipment, congestion of traffic, or other emergency declared by the Panel, it may prescribe temporary through routes that are desirable in the public interest on its own initiative or on application without regard to subchapter II of chapter 7 of this title, and subchapter II of chapter 5 of title 5.

"§ 10924. War emergencies; embargoes imposed by carriers

"(a)(1) When the President, during time of war or threatened war, notifies the Panel 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 Panel 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 Panel 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

"§ 10941. 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 Panel 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 Panel under this part that performs a service, or engages in activities, related to transportation under this part.

"§ 10942. Uniform accounting system

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

"§ 10943. Depreciation charges

"The Panel 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 Panel 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 Panel;

"(2) charge another rate of depreciation; or

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

"§ 10944. Records: form; inspection; preservation

"(a) The Panel 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 Panel under this part to the extent related to those cars or that service.

"(b) The Panel, or an employee designated by the Panel, 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; and

"(B) a person controlling, controlled by, or under common control with a rail carrier if the Panel considers inspection relevant to that person's relation to, or transaction with, that rail carrier.

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

"§ 10945. Reports by rail carriers, lessors, and associations

"(a) The Panel may require rail carriers, lessors, and associations, or classes of them as the Panel may prescribe, to file annual, periodic, and special reports with the Panel containing answers to questions asked by it.

"(b)(1) An annual report shall contain an account, in as much detail as the Panel 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 Panel by the end of the third month after the end of the year for which the report is made unless the Panel extends the filing date or changes the period covered by the report. The annual report and, if the Panel requires, any other report made under this section, shall be made under oath.

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"§ 10961. Implementation of cost accounting principles

"Not less than once every five years after the promulgation of original rules implementing the cost accounting principles established by the Railroad Accounting Principles Board, the Panel shall review such principles and shall, by rule, make such changes in such principles as are required to achieve the regulatory purposes of this part. The Panel 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 Panel shall conform such rules to generally accepted accounting principles.

"§ 10962. 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 Panel under section 10961 of this title. A rail carrier may, after notifying the Panel, make modifications in such system unless, within 60 days after the date of notification, the Panel finds such modifications to be inconsistent with the rules promulgated by the Panel under section 10961 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 Panel, the Panel 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.

"§ 10963. Cost availability

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

"§ 10964. Accounting and cost reporting

"(a) To obtain expense and revenue information for regulatory purposes, the Panel may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Panel 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. To the extent such rules are required solely to provide expense and revenue information necessary for determining railroad costs in regulatory proceedings under this part, such rules shall be promulgated in accordance with the cost accounting principles established by the Railroad Accounting Principles Board.

"(b) Any reports required by the rules established by the Panel under this section shall include only information considered necessary for disclosure under the cost accounting principles established by the Board or under generally accepted accounting principles or the requirements of the Securities and Exchange Commission.

"CHAPTER 111—FINANCE

"SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

"Sec.
"11101. Equipment trusts: recordation; evidence of indebtedness.

"SUBCHAPTER II—COMBINATIONS

"11121. Scope of authority.
"11122. Limitation on pooling and division of transportation or earnings.
"11123. Consolidation, merger, and acquisition of control.
"11124. Consolidation, merger, and acquisition of control: conditions of approval.
"11125. Consolidation, merger, and acquisition of control: procedure.
"11126. Employee protective arrangements in transactions involving rail carriers.
"11127. Supplemental orders.

"SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

"§ 11101. Equipment trusts: recordation; evidence of indebtedness

"(a) 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 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 Panel. 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 Panel. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Panel 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.

"(b) The Panel 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 Panel 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 Panel shall to the greatest extent practicable perform its functions under this section through contracts with private sector entities.

"(d) The Panel shall assess user fees for services performed by the Panel or a contractor thereof under this section. Such fees may be used by the Panel to offset its costs, to the extent provided in advance in appropriations Acts.

"(e) 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 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.

"(f) 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.

"SUBCHAPTER II—COMBINATIONS

"§ 11121. Scope of authority

"(a) The authority of the Panel under this subchapter is exclusive. A rail carrier or corporation participating in or resulting from a transaction approved by or exempted by the Panel 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.

"(b) The requirement to obtain the approval or authorization of the Panel under this subchapter shall only apply to transactions involving at least one Class I rail carrier, and shall not apply to transactions described in section 10702.

"§ 11122. Limitation on pooling and division of transportation or earnings

"(a) A rail carrier providing transportation subject to the jurisdiction of the Panel 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 Panel under this section or section 10923 of this title. The Panel may approve and authorize the agreement or combination if the rail carriers involved assent to the pooling or division and the Panel 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 Panel may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the rail carriers.

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

"§ 11123. Consolidation, merger, and acquisition of control

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

"(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 Panel 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.

"§ 11124. Consolidation, merger, and acquisition of control: conditions of approval

"(a) The Panel may begin a proceeding to approve and authorize a transaction referred to in section 11123 of this title on application of the person seeking that authority. When an application is filed with the Panel, the Panel 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 Panel shall hold a public hearing unless the Panel 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 Panel, the Panel 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 Panel shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Panel may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights. Any trackage rights conditions imposed to alleviate anticompetitive effects of the transaction shall provide for 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 Panel may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. The Panel may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Panel 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 Panel, the Panel 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 Panel 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 Secretary of Transportation.

"(e)(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 Panel 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 Panel 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 Panel 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 Panel, in their discretion, to note in the docket or otherwise publicly the occurrence and substance of an ex parte communication.

"§ 11125. Consolidation, merger, and acquisition of control: procedure

"(a) The Panel shall publish notice of the application under section 11124 in the Federal Register by the end of the 30th day after the application is filed with the Panel. However, if the application is incomplete, the Panel shall reject it by the end of that period. The order of rejection is a final action of the Panel. 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 Panel, 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 Panel, the following conditions apply:

"(1) Written comments about an application may be filed with the Panel 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, 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 Panel by the end of the 15th day after the date of receipt of the written comments.

"(2) The Panel 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 Panel must conclude evidentiary proceedings by the end of the 6th month after the date of publication of notice under subsection (a) of this section. The Panel 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 Panel, which the Panel 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, may be filed with the Panel within 30 days after notice of the application is published under subsection (a) of this section.

"(2) The Panel 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 Panel must conclude any evidentiary proceedings by the 125th day after the date of publication of notice under subsection (a) of this section. The Panel must issue a final decision by the 40th 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, may be filed with the Panel within 30 days after notice of the application is published under subsection (a) of this section.

"(2) The Panel must conclude any evidentiary proceedings by the 105th day after the date of publication of notice under subsection (a) of this section. The Panel must issue a final decision by the 40th day after the date on which it concludes the evidentiary proceedings.

"§ 11126. Employee protective arrangements in transactions involving rail carriers

"When approval is sought for a transaction under sections 11124 and 11125 of this title, the Panel 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 Panel (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).

"§ 11127. Supplemental orders

"When cause exists, the Panel may make appropriate orders supplemental to an order made in a proceeding under sections 11122 through 11126 of this title.

"CHAPTER 113—FEDERAL-STATE RELATIONS

"Sec.
"11301. Tax discrimination against rail transportation property.
"11302. Withholding State and local income tax by rail carriers.

"§ 11301. 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 Panel, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Panel 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 Panel 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.

"§ 11302. 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 Panel 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 115—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

"Sec.
"11501. General authority.
"11502. Enforcement by the Panel.
"11503. Enforcement by the Attorney General.
"11504. Rights and remedies of persons injured by rail carriers.
"11505. Limitation on actions by and against rail carriers.
"11506. Liability of rail carriers under receipts and bills of lading.

"§ 11501. General authority

"(a) The Panel may begin an investigation under this part on its own initiative or on complaint. If the Panel finds that a rail carrier is violating this part, the Panel shall take appropriate action to compel compliance with this part.

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

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

"§ 11502. Enforcement by the Panel

"The Panel may bring a civil action—

"(1) to enjoin a rail carrier from violating sections 10701 through 10706 of this title, or a regulation prescribed or order or certificate issued under any of those sections;

"(2) to enforce subchapter II of chapter 111 of this title and to compel compliance with the order of the Panel under that subchapter; and

"(3) to enforce an order of the Panel, 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 Panel under this part.

"§ 11503. Enforcement by the Attorney General

"The Attorney General may, and on request of the Panel shall, bring court proceedings to enforce this part, or a regulation or order of the Panel or certificate or permit issued under this part, and to prosecute a person violating this part or a regulation or order of the Panel or certificate or permit issued under this part.

"§ 11504. 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 Panel under this part does not obey an order of the Panel, except an order for the payment of money, may bring a civil action to enforce that order under this subsection.

"(b) A rail carrier providing transportation subject to the jurisdiction of the Panel 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.

"(c)(1) A person may file a complaint with the Panel under section 11501(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 Panel under this part.

"(2) When the Panel makes an award under subsection (b) of this section, the Panel shall order the rail carrier to pay the amount awarded by a specific date. The Panel may order a rail carrier providing transportation subject to the jurisdiction of the Panel under this part to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Panel 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 Panel requiring the payment of damages by a rail carrier providing transportation subject to the jurisdiction of the Panel under this part, the text of the order of the Panel must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having ju-

risdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Panel 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.

"§ 11505. Limitation on actions by and against rail carriers

"(a) A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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 file a complaint with the Panel to recover damages under section 11504(b) of this title within 2 years after the claim accrues.

"(c) 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 period under subsection (b) of this section is 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.

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

"(e) 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.

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

§ 11506. Liability of rail carriers under receipts and bills of lading

"(a) A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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 rail carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Panel 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 is-

sued 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 Panel 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.

"CHAPTER 117—CIVIL AND CRIMINAL PENALTIES

"Sec.
"11701. General civil penalties.
"11702. Interference with railroad car supply.
"11703. Record keeping and reporting violations.
"11704. Unlawful disclosure of information.
"11705. Disobedience to subpoenas.
"11706. General criminal penalty when specific penalty not provided.
"11707. Punishment of corporation for violations committed by certain individuals.

§ "11701. General civil penalties

"(a) Except as otherwise provided in this section, a rail carrier providing transportation subject to the jurisdiction of the Panel under this part, an officer or agent of that rail carrier, or a receiver, trustee, lessee, or agent of one of them, knowingly violating an order of the Panel under this part is liable to the United States Government for a civil penalty of $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 Panel under this part, or a receiver or trustee of that rail carrier, violating a regulation or order of the Panel under section 10924(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 10701 through 10706 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 Panel under section 10923 or 10924(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 109 of this title to make, prepare, preserve, or submit to the Panel a record concerning transportation subject to the jurisdiction of the Panel 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 Panel under this part, and a lessor, receiver, or trustee of that rail carrier, violating section 10944(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 Panel 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 Panel 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 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.

"§ 11702. 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 Panel under this part intending to influence an action of that other person related to supply, distribution, or movement of cars or vehicles 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 Panel 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.

"§ 11703. Record keeping and reporting violations

"A person required to make a report to the Panel, or make, prepare, or preserve a record, under subchapter III of chapter 109 of this title about transportation subject to the jurisdiction of the Panel 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 Panel; or

"(5) files a false report or record with the Panel,

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

"§ 11704. Unlawful disclosure of information

"(a) A—

"(1) rail carrier providing transportation subject to the jurisdiction of the Panel 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 10509 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 or broker providing transportation subject to the jurisdiction of the Panel 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 Panel delegated to make an inspection or examination under section 10944 of this title who knowingly discloses information acquired during that inspection or examination, except as directed by the Panel, 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 10963 of this title by a rail carrier providing transportation subject to the jurisdiction of the Panel under this part shall be fined not more than $50,000.

"§ 11705. Disobedience to subpoenas

"A person not obeying a subpoena or requirement of the Panel 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.

"§ 11706. 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 Panel 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. However, if the violation is for discrimination in rates charged for transportation, 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 section 11122 of this title continues.

"§ 11707. 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 Panel 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.".

(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; and

"(K) promote intermodal transportation; and

"(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.

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

"§ 13102. Definitions

"In this part, the following definitions shall apply:

"(1) 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.

"(2) CARRIER.—The term 'carrier' means a motor carrier, a water carrier, and a freight forwarder, and, for purposes of sections 13902, 13905, and 13906, the term includes foreign motor carriers and foreign motor private carriers.

"(3) 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).

"(4) 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.

"(5) 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)).

"(6) 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)).

"(7) 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 part.

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

"(8) HIGHWAY.—The term 'highway' means a road, highway, street, and way in a State.

"(9) 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.

"(10) 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.

"(11) MOTOR CARRIER.—The term 'motor carrier' means a person providing motor vehicle transportation for compensation.

"(12) 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.

"(13) 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.

"(14) 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.

"(15) PANEL.—The term 'Panel' means the Transportation Adjudication Panel.

"(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 receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, 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 PANEL.—For those provisions of this part that are specified to be carried out by the Panel, the Panel 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 authority of each State in which it operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. 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 of this title, 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. 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 Panel shall 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 common 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 Panel, as applicable, finds it necessary to exercise jurisdiction to carry out the transportation policy of section 13101, neither the Secretary nor the Panel 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 Panel may require by regulation to carry out the provisions of such section 13506(a)(5). The Secretary or the Panel, or an employee designated by the Secretary or the Panel, 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 Panel 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 Panel containing answers to questions about transportation provided by such association or federation.

"(c) ENFORCEMENT.—The Secretary or the Panel may bring a civil action to enforce subsections (a) and (b) of this section or a regulation or order of the Secretary or the Panel 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 Panel, 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 Government 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 has 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 Panel 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 Panel 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 Panel, as applicable, shall exempt a person, class of persons, or a transaction or service from the application 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 Panel finds that the application of that provision in whole or in part—

"(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 Panel, as applicable, may, where appropriate, begin a proceeding under this section on the Secretary's or Panel's own initiative or on application by an interested party.

"(c) PERIOD OF EXEMPTION.—The Secretary or Panel, as applicable, may specify the period of time during which an exemption granted under this section is effective.

"(d) REVOCATION.—The Secretary or Panel, 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.—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 not terminated under section 13907(d)(2).

"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. Billing and collecting practices.
"13708. Procedures for resolving claims involving unfiled, negotiated transportation rates.
"13709. Additional motor carrier undercharge provisions.
"13710. Alternative procedure for resolving undercharge disputes.
"13711. Government traffic.
"13712. 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 described in section 13102(9)(A), or

"(B) a rate for a movement by or with a water carrier in noncontiguous domestic trade,

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 PANEL FOR VIOLATIONS.—When the Panel finds it necessary to stop or prevent a violation of subsection (a), the Panel shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

"(c) ZONE OF REASONABLENESS.—

"(1) IN GENERAL.—For purposes of this section, a rate or division of a carrier for service in noncontiguous domestic trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 10 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.

"§ 13702. Tariff requirement for certain transportation

"(a) IN GENERAL.—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 described in section 13102(9)(A);

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 Panel tariffs containing the rates established for such transportation or service. The carriers shall keep such tariffs available for public inspection. The Panel shall prescribe the form and manner of publishing, filing, and keeping tariffs available for public inspection under this subsection.

"(2) CONTENTS.—The Panel 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 Panel 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 Panel 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 kept open for public inspection.

"(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 tariff. The tariff must be submitted to the Panel for inspection 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 in a tariff in agreements covering the transportation of households described in section 13908.102(9)(B).

"(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 Panel for resolution.

"(d) INVALIDATION.—The Panel may invalidate a tariff prepared by a carrier or carriers under this section if that tariff violates this section or a regulation of the Panel 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 described in section 13102(9)(A);

"(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 PANEL; APPROVAL.—An agreement entered into under subsection (a) may be submitted by any carrier or carriers that are parties to such agreement to the Panel for approval and may be approved by the Panel only if it finds that such agreement is in the public interest.

"(3) CONDITIONS.—The Panel 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) INVESTIGATIONS.—The Panel may suspend and investigate the reasonableness of any classification or rate adjustment of general application made pursuant to an agreement under this section.

"(5) EFFECT OF APPROVAL.—If the Panel 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 Panel, 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 Panel may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Panel, or its delegate, may inspect a record maintained under this section, or monitor any organization's compliance with this section.

"(c) REVIEW.—The Panel 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 Panel 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 Panel, the agreement is unchanged, and the Panel approves such renewal. The Panel shall approve the renewal unless it finds that the renewal is not in the public interest.

"(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 Panel 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) MILEAGE RATE LIMITATION.—No carrier subject to jurisdiction under subchapter I or III of chapter 135 may enforce collection of its mileage rates unless such carrier—

"(1) uses an independent publication of mileage (other than a publication referred to in paragraph (2)) which can be examined by any interested person upon reasonable request; or

"(2) is a participant in a publication of mileages formulated under an agreement approved under this section.

"(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 PANEL.—When the Panel finds it necessary to enforce the requirements of this section, the Panel 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. Billing and collecting practices

"(a) TIMING.—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.

"(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.

"§ 13708. Procedures for resolving claims involving unfiled, negotiated transportation rates

"(a) TRANSPORTATION PROVIDED BEFORE EFFECTIVE DATE.—

"(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, 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 with the Interstate Commerce Commission 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 Interstate Commerce Commission 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 FOR RESOLUTION OF SHOWINGS.—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 Panel. 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 UNDER DISPUTE RESOLUTION PROCEDURE.—Satisfaction of a claim under subsection (b), (c), or (d) shall be binding on the parties, and the parties shall not be subject to chapter 119, as in effect on the day before the effective date of this section.

"(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 Panel.

"(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 Panel.

"(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 Panel.

"(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 subsections (b), (c), or (d), the person may pursue all rights and remedies existing under this title on the day before the effective date of this section.

"(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 Panel 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.

"§ 13709. Additional motor carrier undercharge provisions

"(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 agreed to between the shipper and carrier may have been based.

"(2) REASONABLENESS OF RATES; COLLECTING ADDITIONAL CHARGES.—With respect to transportation provided before the effective date of this section, 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 Panel shall determine whether such rates and provisions are reasonable or applicable based on the record before it. 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 Panel 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.

"(3) CHARGES BEFORE EFFECTIVE DATE.—With respect to transportation provided before the effective date of this section, if a shipper seeks to contest the charges originally billed or additional charges subsequently billed, the shipper may request that the Panel 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 Panel shall resolve the dispute.

"§ 13710. 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 that was subject to jurisdiction under subchapter II of chapter 105 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 the applicable rate that was lawfully in effect pursuant to a tariff that was filed in accordance with chapter 107 of this title by the carrier or freight forwarder applicable to such transportation service and 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) of this title or is transporting property between places described in section 13501(1) of this title for the purpose of avoiding application of this section.

"(b) JURISDICTION OF PANEL.—

"(1) DETERMINATION.—The Panel 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 Panel 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 Panel 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 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 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 Panel 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, relating to a filed tariff rate and other general tariff requirements, as in effect on the day before such effective date.

"(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 13708 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.

"§ 13711. 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.

"§ 13712. 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 motor carrier 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 Panel;

"(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 Panel, 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.—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 REGARDING CERTAIN EXPRESS 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) TREATMENT.—Except as provided in section 14501(a), any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until the 30th day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph and the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation.

"(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 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.

"§ 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 willing and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Panel.

"(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 motor carrier 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 willing and able to be a broker for transportation and to comply with this part and applicable regulations of the Secretary.

"(b) LIMITATION.—

"(1) REGISTRATION AS CARRIER REQUIRED.—The broker may provide transportation itself only if the broker also has registered to provide transportation as a carrier under this chapter.

"(2) EXCEPTION.—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) IN GENERAL.—Each registration issued under section 13902, 13903, or 13904 shall be effective from the date specified by the Secretary and shall remain in effect, except as otherwise provided in this part.

"(b) 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 Panel, or a condition of its registration.

"(c) 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 of the registrant; and

"(2) the registrant willfully does not comply with the order for a period of 30 days.

"(d) 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 Sec-

retary 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) PANEL REVIEW.—The Panel, 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.

"(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 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).

"(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(9)(A), to provide specified services under specified rates and conditions. If the shipper, in writing, expressly waives 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 this part and may not be subsequently challenged on the ground that it violates a provision of this part.

"(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 Panel, 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 Panel, or an employee designated by the Secretary or Panel, 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 Panel, 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 Panel, as applicable, may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers.

"§ 14123. Financial reporting

"(a) IN GENERAL.—The Secretary shall require Class I motor carriers, and may require 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.

"(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) EXEMPTION FROM PUBLIC RELEASE.—

"(1) 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.

"(2) PROCEDURE.—After a request under paragraph (1) 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.

"(3) USE OF DATA FOR INTERNAL DOT PURPOSES.—If an exemption is granted under this subsection, 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.

"(4) PERIOD OF EXEMPTIONS.—Exemptions granted under this subsection shall be for 3-year periods.

"(5) PENDING REQUESTS.—The Secretary shall not release publicly the report of a carrier making a request under paragraph (1) while such request is pending.

"(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.

"§ 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 of this title 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 Panel under this section.

"(b) STANDARDS FOR APPROVAL.—The Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Panel to be just and reasonable.

"(3) HEARING.—If the Panel 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 Panel 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 Panel 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 Panel may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Panel to be just and reasonable.

"(4) SPECIAL RULES FOR HOUSEHOLD GOODS CARRIERS.—In the case of an application for Panel 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 Panel 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 Panel 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 Panel 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 Panel 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.

"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 two 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 two 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—

"(i) at the request of a law enforcement officer; or

"(ii) 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, or

"(iv) antitrust immunity for joint line rates or routes, classifications, and mileage guides,

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 Panel 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) This subsection shall not apply with respect to the State of Hawaii until August 22, 1997.

"§ 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 car-

rier 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) will be 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) will minimize the costs of complying with the registration system; and

"(III) will result 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 a certificate or permit 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 Panel, as applicable, may begin an investigation under this part on the Secretary's or the Panel's own initiative or on complaint. If the Secretary or Panel, as applicable finds that a carrier or broker is violating this part, the Secretary or Panel, 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

Panel, 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 Panel, 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 Panel, 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 Panel 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 Panel, 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 Panel, 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 Panel, 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 of Transportation or Intermodal Surface Transportation Panel shall, bring court proceedings—

"(1) to enforce this part or a regulation or order of the Secretary or Panel 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 Panel or term of registration under this part.

"§ 14704. Rights and remedies of persons injured by carriers or brokers

"(a) 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 Panel, 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.

"(b) LIABILITY AND DAMAGES.—

"(1) LIABILITY 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 of this title.

"(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.

"(c) ELECTION.—

"(1) COMPLAINT TO DOT OR PANEL; CIVIL ACTION.—A person may file a complaint with the Panel or the Secretary, as applicable, under section 14701(b) of this title or bring a civil action under subsection (b)(1) or (2) of this section to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

"(2) ORDER OF DOT OR PANEL.—

"(A) IN GENERAL.—When the Panel or Secretary, as applicable, makes an award under subsection (b) of this section, the Panel or Secretary, as applicable, shall order the carrier to pay the amount awarded by a specific date. The Panel or Secretary, as applicable, may order a carrier or broker provid-

ing 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 Panel 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 Panel 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 Panel 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 Panel 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.

"(3) ATTORNEY'S FEES.—The district court shall award a reasonable attorney's fee as a part of the damages for which a carrier or broker is found liable under this subsection. The district court shall tax and collect that fee as a 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 Panel 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 Panel or Secretary, as applicable, to recover damages under section 14704(b)(2) of this title 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 subsection (b) of this section and the 2-year period under subsection (c) of this section are extended for 90 days from the time the 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) PAYMENT.—A person must begin a civil action to enforce an order of the Panel or Secretary against a carrier for the payment of money within 1 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 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 filed under section 13702 of this title. 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) LIMITATION OF LIABILITY BY CONTRACT.—A carrier may limit or be exempt from liability imposed under subsection (a) of this section by a mutual written agreement, that is referred to in the receipt, bill of lading, or contract for the transportation involved entered into with the shipper, to limit liability to a specified amount.

"(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 (other than a rail 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 Panel 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.

"(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 18 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 fees, 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 decision making process.

"(5) LIMITATION ON FEES.—No fee of more than $25 may be charged a shipper for instituting an arbitration proceeding under this subsection. In any case in which a shipper is charged a fee under this paragraph for instituting an arbitration proceeding and such dispute is settled in favor of the shipper, the person settling the dispute must refund such fee to the shipper unless the person settling the dispute determines that such refund is inappropriate.

"(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 motor 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 those types of household goods.

"§ 14709. Tariff reconciliation rules for motor carriers of property

"Subject to review and approval by the Panel, 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 sections 10761 and 10762 of this title 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 filed 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. Record keeping and reporting violations.
"14908. Unlawful disclosure of information.
"14909. Disobedience to subpoenas.
"14910. General criminal 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.

"§ 14901. General civil penalties

"(a) REPORTING AND RECORDKEEPING.—A person required to make a report to the Secretary or the Panel, 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 Government 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 Panel relating to protection of individ-

ual 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.

"§ 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 Government 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) CRIMINAL PENALTY FOR UNDERCHARGING.—A person that knowingly 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 less than the rate in effect under section 13702 shall be fined at least $1,000 but not more than $20,000, imprisoned for not more than 2 years, or both.

"(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 at least $1,000 but not more than $20,000, imprisoned for 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 subsection (a) or (b) of 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) knowingly 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 knowingly and willfully 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,

shall be fined at least $200 for the first violation and at least $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 knowingly and willfully 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, shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

"(2) AGENTS AND OTHERS.—A person that knowingly and willfully 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, shall be fined 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.—Any person who 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 Government for a civil penalty of not more than $10,000 for each violation.

"(b) CRIMINAL PENALTIES.—Any person who knowingly violates section 14103(b) of this title shall be fined not more than $10,000, imprisoned for 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 knowingly and willfully tries to evade regulation provided under this part for carriers or brokers shall be fined at least $200 for the first violation and at least $250 for a subsequent violation.

"§ 14907. Record keeping and reporting violations

"A person required to make a report to the Secretary or the Panel, 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) willfully does not make that report;

"(2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary or Panel, as applicable, requires the question to be answered;

"(3) willfully does not make, prepare, or preserve 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;

"(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 makes, prepares, or preserves a record in violation of an applicable regulation or order of the Secretary or Panel;

shall be fined 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 knowingly disclose to another person, except the shipper or consignee, and another person may not solicit, or knowingly 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) FINE; VENUE.—A person violating paragraph (1) of this subsection shall be fined not less than $2,000. Trial in a criminal action under this paragraph is in the judicial district in which any part of the violation is committed.

"(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

"A person not obeying a subpoena or requirement of the Secretary or the Panel to appear and testify or produce records shall be fined not less than $5,000, imprisoned for not more than 1 year, or both.

"§ 14910. General criminal penalty when specific penalty not provided

"When another criminal penalty is not provided under this chapter, a person that knowingly and willfully 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 under section 13902, shall be fined at least $500 for the first violation and at least $500 for a subsequent 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.—Any individual who has been found to have committed weight-bumping shall, for each offense, be fined at least $1,000 but not more than $10,000, imprisoned for 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.".

SEC. 104. MISCELLANEOUS MOTOR CARRIER PROVISIONS.

(a) MULTIPLE INSURERS.—Section 31138(c) of title 49, United States Code, is amended by adding at the end thereof 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.".

(b) MINIMUM FINANCIAL RESPONSIBILITY REQUIREMENTS WITH RESPECT TO CERTAIN MASS 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 "; or"; and

(3) by adding at the end the following:

"(4) providing mass transportation service within a transit service area in other than urbanized areas under an agreement with a State or local government funded, in whole or in part, with a grant under section 5310 or 5311, in-

cluding transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities; provided 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.".

(c) TRANSPORTERS OF PROPERTY.—Section 31139(e) of such title is amended by adding at the end thereof 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.".

(d) 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 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".

(e) 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.

(f) AUTOMOBILE TRANSPORTERS DEFINED.—The Secretary of Transportation shall issue a regulation amending the definition of automobile transporters under part 658 of title 23, Code of Federal Regulations, to mean any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles, race car transporters, or specialty trailers designed for the racing industry with a 10-foot 1-inch spread axle setting.

TITLE II—TRANSPORTATION ADJUDICATION PANEL

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—TRANSPORTATION ADJUDICATION PANEL

"SUBCHAPTER I—ESTABLISHMENT

Sec.
"701. Establishment of Panel.
"702. Functions.
"703. Administrative provisions.
"704. Annual report.
"705. Authorization of appropriations.
"706. Reporting official action.

"SUBCHAPTER II—ADMINISTRATIVE

"721. Powers.
"722. Panel action.
"723. Service of notice in Panel proceedings.
"724. Service of process in court proceedings.
"725. National organization of State commissions.
"726. Administrative support.
"727. Definitions.

"SUBCHAPTER I—ESTABLISHMENT

"§ 701. Establishment of Panel

"(a) ESTABLISHMENT.—There is hereby established within the Department of Transportation the Transportation Adjudication Panel.

"(b) MEMBERSHIP.—(1) The Panel 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 Panel 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 in the private sector.

"(3) The term of each member of the Panel 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 then serving unexpired terms shall become members of the Panel, 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.

"(5) No individual may serve as a member of the Panel for more than 2 terms. In the case of an individual who becomes a member of the Panel 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 Panel 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 Panel does not impair the right of the remaining members to exercise all of the powers of the Panel. The Panel may designate a member to act as Director during any period in which there is no Director designated by the President.

"(c) DIRECTOR.—(1) There shall be at the head of the Panel a Director, who shall be designated by the President from among the members of the Panel. The Director 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 Panel the Director shall be responsible for administering the Panel. The Director may delegate the powers granted under this paragraph to an officer, employee, or office of the Panel. The Director 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 Panel, including attorneys to provide legal aid and service to the Panel and its members, and to represent the Panel in any case in court;

"(B) appoint the heads of offices with the approval of the Panel;

"(C) distribute Panel responsibilities among officers and employees and offices of the Panel;

"(D) prepare requests for appropriations for the Panel and submit those requests to the President and Congress with the prior approval of the Panel; and

"(E) supervise the expenditure of funds allocated by the Panel for major programs and purposes.

"§ 702. Functions

"Except as otherwise provided in the ICC Termination Act of 1995, or the amendments made thereby, the Panel 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 Panel in the same manner as it does to an independent regulatory agency.

"(b) OPEN MEETINGS.—For purposes of section 552b of title 5, United States Code, the Panel shall be deemed to be an agency.

"(c) INDEPENDENCE.—In the performance of their functions, the members, employees, and other personnel of the Panel 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 Director of the Panel may appear for, and represent the Panel in, any civil action brought in connection with any function carried out by the Panel 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 Panel 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 Panel and include a statement by the Panel—

"(1) showing the amount requested by the Panel in its budgetary presentation to the Secretary and the Office of Management and Budget; and

"(2) an assessment of the budgetary needs of the Panel.

"(g) DIRECT TRANSMITTAL TO CONGRESS.—The Panel 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 Panel with Congress, or a committee or member of Congress, about the information.

"§ 704. Annual report

"The Panel shall annually transmit to the Congress a report on its activities.

"§ 705. Authorization of appropriations

"There are authorized to be appropriated to the Secretary of Transportation for the activities of the Panel—

"(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) The Panel 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 Panel and, if damages are awarded, the findings of fact supporting the award. The Panel may have its reports published for public use. A published report of the Panel is competent evidence of its contents.

"(b)(1) When action of the Panel in a matter related to a rail carrier is taken by the Panel, an individual member of the Panel, or another individual or group of individuals designated to take official action for the Panel, 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) of this subsection 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) The Panel shall carry out this chapter and subtitle IV. Enumeration of a power of the Panel in this chapter or subtitle IV does not exclude another power the Panel may have in carrying out this chapter or subtitle IV. The Panel may prescribe regulations in carrying out this chapter and subtitle IV.

"(b) The Panel may—

"(1) inquire into and report on the management of the business of carriers providing, and brokers for, 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 or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker;

"(3) obtain from those carriers, brokers, and persons information the Panel 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)(1) The Panel may subpoena witnesses and records related to a proceeding of the Panel from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Panel, or a party to a proceeding before the Panel, 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)(1) In a proceeding, the Panel 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 Panel 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) of this subsection, the Panel 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 Panel or agreed on by the parties by written stipulation filed with the Panel. A deposition shall be filed with the Panel promptly.

"(e) Each witness summoned before the Panel 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. Panel action

"(a) Unless otherwise provided in subtitle IV, the Panel may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect.

"(b) An action of the Panel remains in effect under its own terms or until superseded. The Panel may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Panel. A court of competent jurisdiction may suspend or set aside any such action.

"(c) The Panel 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 Panel; or

"(3) change an action of the Panel.

An interested party may petition to reopen and reconsider an action of the Panel under this subsection under regulations of the Panel.

"(d) Notwithstanding subtitle IV, an action of the Panel 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 Panel proceedings

"(a) A carrier providing transportation subject to the jurisdiction of the Panel 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 Panel may be made.

"(b) A designation under subsection (a) of this section shall be in writing and filed with the Panel.

"(c) Except as otherwise provided, notices of the Panel 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 Panel 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 Panel.

"(d) 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 Panel on an attorney in fact for the carrier constitutes service of notice on the carrier.

"§ 724. Service of process in court proceedings

"(a) A carrier providing transportation subject to the jurisdiction of the Panel 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 Panel.

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

"§ 725. National organization of State commissions

"The Administrator of General Services shall assign space and facilities for the use of the national organization of the State commissions and their representatives. The space and facilities shall be available for the use of the State commissions and their representatives cooperating with the Panel or with another department, agency, or instrumentality of the United States Government. The rental for such space shall be paid by the national organization's Federal agency members other than the Panel.

"§ 726. Administrative support

"The Secretary of Transportation shall provide appropriate administrative support for the Panel.

"§ 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. TRANSPORTATION ADJUDICATION PANEL ..... 701".

SEC. 202. REORGANIZATION.

The Director of the Transportation Adjudication Panel (in this Act referred to as the "Panel") may allocate or reallocate any function of the Panel, 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 Panel, and may establish, consolidate, alter, or discontinue in the Panel any organizational entities that were entities of the Interstate Commerce Commission, as the Director considers necessary or appropriate.

SEC. 203. TRANSFER OF ASSETS.

Except as otherwise provided in this Act and the amendments made by this Act, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to the Panel by this Act shall be available to the Panel at such time or times as the President directs for use in connection with the functions transferred.

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 President, 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 President, the Panel, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—(1) Except as provided in paragraph (2), the Panel shall assume responsibility for the continuation of all proceedings pending before the Interstate Commerce Commission, and shall complete such proceedings in accordance with law and regulations as in effect before the date of the enactment of this Act.

(2) In the case of a proceeding under a provision of law repealed, and not reenacted, by this Act, such proceeding shall be terminated.

(c) SUITS.—(1) This Act shall not affect suits commenced before the date of the enactment of this Act, except that the Panel shall assume the position of the Interstate Commerce Commission, and, except as provided in paragraph (2), 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) If the court in a suit described in paragraph (1) remands a case to the Panel, 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) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, an officer or employee of the Panel 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 Panel or a member or employee of the Panel, 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 "Director, Transportation Adjudication Panel.".

(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, Transportation Adjudication Panel.".

SEC. 302. TITLE 11 AMENDMENTS.

Subchapter IV of chapter 11 of title 11, United States Code, is amended—

(1) by amending section 1162 to read as follows:

"§ 1162. Definition

"In this subchapter, 'Panel' means the 'Transportation Adjudication Panel'."; and

(2) by striking "Commission" each place it appears and inserting in lieu thereof "Panel".

SEC. 303. TITLE 18 AMENDMENT.

Section 6001(1) of title 18, United States Code, is amended by striking "Interstate Commerce Commission" and inserting in lieu thereof "Transportation Adjudication Panel".

SEC. 304. INTERNAL REVENUE CODE OF 1986 AMENDMENTS.

(a) SECTION 3231.—Section 3231 of the Internal Revenue Code of 1986 is amended—

(1) by striking "Interstate Commerce Commission" in subsection (a) and inserting in lieu thereof "Transportation Adjudication Panel"; and

(2) by striking "an express carrier, sleeping car carrier, or" in subsection (g) and inserting in lieu thereof "a".

(b) SECTION 7701.—Section 7701 of the Internal Revenue Code of 1986 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 "Transportation Adjudication Panel";

(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 "Interstate Commerce Commission under subchapter III of chapter 105" and inserting in lieu thereof "Transportation Adjudication Panel under subchapter II of chapter 135";

(5) in paragraph (33)(G), by striking "subchapter I of chapter 105" and inserting in lieu thereof "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 157 AMENDMENTS.—(1) Chapter 157 of title 28, United States Code, is amended—

(A) by striking "**INTERSTATE COMMERCE COMMISSION**" in the chapter heading and inserting in lieu thereof "**TRANSPORTATION ADJUDICATION PANEL**";

(B) by striking "**Commission's**" in the section heading of section 2321 and inserting in lieu thereof "**Panel's**";

(C) by striking "Interstate Commerce Commission" each place it appears and inserting in lieu thereof "Transportation Adjudication Panel"; and

(D) by striking "Commission" each place it appears and inserting in lieu thereof "Panel".

(2)(A) The item relating to chapter 157 in the table of chapters of title 28, United States Code, is amended by striking "Interstate Commerce Commission" and inserting in lieu thereof "Transportation Adjudication Panel".

(B) The item relating to section 2321 in the table of sections of chapter 157 of title 28, United States Code, is amended by striking "Commission's" and inserting in lieu thereof "Panel's".

(b) CHAPTER 158 AMENDMENTS.—Chapter 158 of title 28, United States Code, is amended—

(1) by striking "the Interstate Commerce Commission," in section 2341(3)(A);

(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 Panel, when the order was entered by the Transportation Adjudication Panel."; and

(5) in section 2342, by—

(A) inserting "or pursuant to part B of subtitle IV of title 49, United States Code" before the semicolon at the end of paragraph (3)(A); and

(B) striking paragraph (5) and inserting the following:

"(5) all rules, regulations, or final orders of the Transportation Adjudication Panel made reviewable by section 2321 of this title; and".

SEC. 306. TITLE 39 AMENDMENTS.

Title 39, United States Code, is amended—

(1) in section 5005(b)(3), by striking "Interstate Commerce Commission" and inserting in lieu thereof "Transportation Adjudication Panel"; and

(2) in chapter 52—

(A) by amending paragraph (1) of section 5201 to read as follows:

"(1) 'Panel' means the Transportation Adjudication Panel;";

(B) by striking subsection (f) of section 5203, and redesignating subsection (g) of such section as subsection (f);

(C) in subsection (f) of section 5203, as so redesignated by subparagraph (B) of this paragraph, by striking "Commission" and inserting in lieu thereof "Panel";

(D) by striking "**Interstate Commerce Commission**" in the section heading of section 5207 and inserting in lieu thereof "**Transportation Adjudication Panel**";

(E) by striking "Commission's" in sections 5208(a) and 5215(a) and inserting in lieu thereof "Panel's";

(F) by striking "Commission" each place it appears and inserting in lieu thereof "Panel"; and

(G) in the item relating to section 5207 in the table of sections, by striking "Interstate Commerce Commission" and inserting in lieu thereof "Transportation Adjudication Panel".

SEC. 307. TITLE 49 AMENDMENTS.

Title 49, United States Code, is amended—

(1) in section 22106(e)(1) by striking "an application for abandonment of" and inserting in lieu thereof "a notice of intent to abandon"; and

(2) by repealing subsection (d) of section 24705.

Subtitle B—Other Amendments

SEC. 311. AGRICULTURAL ADJUSTMENT ACT OF 1938 AMENDMENT.

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 "Transportation Adjudication Panel";

(2) by striking "Commission" each place it appears and inserting in lieu thereof "Panel"; and

(3) by striking "Commission's" in subsection (b) and inserting in lieu thereof "Panel'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 "Transportation Adjudication Panel".

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 "Transportation Adjudication Panel 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 Transportation Adjudication Panel".

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 Transportation Adjudication Panel".

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 Transportation Adjudication Panel".

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 "Director of the Transportation Adjudication Panel"; and

(B) by striking "Commission" and inserting in lieu thereof "Panel"; and

(2) in section 9(b), by striking "Interstate Commerce Commission" and inserting in lieu thereof "Transportation Adjudication Panel".

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 "Transportation Adjudication Panel"; 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 "Transportation Adjudication Panel where applicable to common carriers subject to 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 Transportation Adjudication Panel 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 amended by striking "Interstate Commerce Commission" and inserting in lieu thereof "Transportation Adjudication Panel".

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 "Transportation Adjudication Panel"; and

(B) by striking "commission" and inserting in lieu thereof "board"; and

(2) in section 28 (46 U.S.C. App. 884)—

(A) by striking "Interstate Commerce Commission" and inserting in lieu thereof "Transportation Adjudication Panel"; and

(B) by striking "commission" each place it appears and inserting in lieu thereof "Panel".

SEC. 322. RAILWAY LABOR ACT AMENDMENTS.

Section 1 of the Railway Labor Act (45 U.S.C. 151) is amended—

(1) by striking "express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act" in the first paragraph and inserting in lieu thereof "railroad subject to the jurisdiction of the Transportation Adjudication Panel";

(2) by striking "Interstate Commerce Commission" each place it appears in the first and fifth paragraphs and inserting in lieu thereof "Transportation Adjudication Panel"; and

(3) by striking "Commission" each place it appears in the fifth paragraph and inserting in lieu thereof "Panel".

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 amending subsection (a)(1)(i) to read as follows:

"(i) any carrier by railroad subject to the jurisdiction of the Transportation Adjudication Panel under part A of subtitle IV of title 49, United States Code;";

(2) by striking "Interstate Commerce Commission is hereby authorized and directed upon request of the Board" in subsection (a)(2)(ii) and inserting in lieu thereof "Transportation Adjudication Panel is hereby authorized and directed upon request of the Railroad Retirement Board"; and

(3) by inserting "the Transportation Adjudication Panel," after "the Interstate Commerce Commission," in subsection (o).

SEC. 324. RAILROAD UNEMPLOYMENT INSURANCE ACT AMENDMENTS.

The Railroad Unemployment Insurance Act is amended—

(1) by striking "Interstate Commerce Commission is hereby authorized and directed upon request of the Board" in section 1(a) (45 U.S.C. 351(a)) and inserting in lieu thereof "Transportation Adjudication Panel is hereby authorized and directed upon request of the Railroad Retirement Board";

(2) by amending paragraph (b) of such section 1 to read as follows:

"(b) The term 'carrier' means a railroad subject to the jurisdiction of the Transportation Adjudication Panel 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 "Transportation Adjudication Panel, 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) by amending paragraph (2) of section 2 (45 U.S.C. 661(2)) to read as follows:

"(2) 'Panel' means the Transportation Adjudication Panel.";

(2) by striking "Interstate Commerce Commission" in section 6(a) (45 U.S.C. 665(a)) and inserting in lieu thereof "Panel"; and

(3) by striking "Commission" each place it appears and inserting in lieu thereof "Panel".

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 "Interstate Commerce Commission" each place it appears and inserting in lieu thereof "Transportation Adjudication Panel"; and

(2) by striking "Commission" in subsection (b) and inserting in lieu thereof "Panel".

SEC. 327. REGIONAL RAIL REORGANIZATION ACT OF 1973 AMENDMENTS.

The Regional Rail Reorganization Act of 1973 is amended—

(1) in section 304(d)(3) (45 U.S.C. 744(d)(3))—

(A) by striking "this title," and all that follows through "(A) shall take" and inserting in lieu thereof "this title, the Commission shall take"; and

(B) by striking "this subsection; and" and all that follows through "205(d)(6) of this Act" and inserting in lieu thereof "this subsection"; and

(2) in section 707 (45 U.S.C. 797f)—

(A) by inserting "(a)" at the beginning of the text; and

(B) by adding at the end the following new subsections:

"(b) Notwithstanding any other provision of this Act or any agreement or arrangement in effect as of the date of the enactment of this subsection, the Corporation may not sell or transfer ownership or management, in whole or in part, of any facility acquired by the Corporation under this Act that is used for the repair, rehabilitation, or maintenance of cars or locomotives, without first obtaining the expess consent of the authorized representatives of the employees at such facility covered by collective bargaining agreements. Any transaction undertaken in violation of this subsection or subsection (c) shall be considered in violation of section 6 of the Railway Labor Act, and shall be actionable as such.

"(c) Notwithstanding any other provision of this Act or any agreement or arrangement in effect as of the date of the enactment of this subsection, any transfer by the Corporation of ownership, in whole or in part, other than for scrappage, of a car or locomotive that was repaired, rehabilitated, or maintained, before the date of the enactment of this subsection, at a facility acquired by the Corporation under this Act, without first obtaining the express consent of the authorized representatives of the employees at the Corporation's principal maintenance facility covered by collective bargaining agreements, is prohibited.".

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 repealing 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 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.";

(2) in section 509(b) (45 U.S.C. 829(b)) by striking paragraph (2); and

(3) 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. SERVICE CONTRACT ACT OF 1965 AMENDMENT.

Section 7(3) of the Service Contract Act of 1965 (41 U.S.C. 356(3)) is amended by striking "where published tariff rates are in effect".

SEC. 332. FISCAL YEAR 1982 CONTINUING RESOLUTION AMENDMENT.

Section 115 of the Joint Resolution entitled "Joint Resolution making further continuing appropriations for the fiscal year 1982, and for other purposes" (Public Law 97–92; 95 Stat. 1196) is repealed.

SEC. 333. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.

Section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) is amended by—

(1) striking "part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.) , or any successor provision of" in paragraph (2)(C) and inserting "part B of"; and

(2) striking "part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.), and any successor provision of" in paragraph (3) and inserting "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 amended by striking all after "subsection (c)" and inserting "shall not take effect as long as section 11501(g)(2) of title 49, United States Code, applies to that State.".

SEC. 335. TERMINATION OF CERTAIN MARITIME AUTHORITY.

(a) REPEAL OF INTERCOASTAL SHIPPING ACT, 1933.—The Act of March 3, 1933 (Chapter 199; 46 App. U.S.C. 843 et seq.), commonly referred to as the Intercoastal Shipping Act, 1933, 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).

SEC. 336. DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION ACT, 1982 AMENDMENT.

Section 402 of the Department of Transportation and Related Agencies Appropriation Act, 1982 (Public Law 97–102; 95 Stat. 1465) is repealed.

COMMITTEE REPORT

PURPOSE AND SUMMARY

On October 26, 1995, H.R. 2539, the ICC Termination Act of 1995, was introduced. The bill substantially deregulates the rail and motor carrier industries and abolishes the 108-year-old Interstate Commerce Commission effective upon enactment.

There is a long history behind the termination of the Interstate Commerce Commission beginning with the Staggers Act of 1980 and the Motor Carrier Act of 1980, which began the substantial economic deregulation of the surface transportation industry and the whittling away of the size and scope of the ICC. In 1970s the ICC had 11 Commissioners and employed over 2,000 people; today it has 5 Commissioners and less than 400 employees.

The recognition that the surface transportation industry is competitive and that few economic regulatory activities are required to maintain a balanced transportation network has led to calls for the ICC's elimination. In the 1980s, the Reagan Administration submitted legislation on several occasions to terminate the ICC and transfer remaining activities to other Federal agencies. Congressional action was never taken on these legislative proposals; however, last year the House voted to eliminate all funding for the ICC in the FY 1995 Department of Transportation and Related Agencies Appropriations Act. Fiscal Year 1995 funding was subsequently partially restored in conference, with the understanding that authorizing legislation would be produced to complete termination of the ICC in FY 1996. In April, the Clinton Administration submitted legislation to sunset the ICC effective September 30, 1996, which was introduced by Representatives Lipinski and Mineta by request as H.R. 1436.

Summary of Rail Provisions in H.R. 2539. The bill eliminates obsolete rail provisions and transfers those activities that need to be continued to the Department of Transportation. A three-member decisionally independent adjudicatory panel (to be discussed in greater detail below) is established within the Department of Transportation to administer these remaining activities.

Provisions and activities that are repealed or eliminated in H.R. 2539 include:

Tariff filing: Requires that rail carriers file rates for common carriage shipments with the ICC. (This is replaced with an obligation that the railroad notify the shipper of a change in a rate.)

Regulation of entry, exit, and fares of passenger rail service.

Securities jurisdiction: Requires railroads to obtain ICC authorization to issue securities or to assume an obligation or liability with respect to the securities of another, and address internal corporate relationships between railroads and shareholders.

Financial Assistance Program: Authorizes regulatory policing of continued subsidy and purchase arrangements between shippers and railroads on lines proposed for abandonment.

Feeder Line Development Program: Authorizes the ICC to order the sale of a line whose shippers are not being ade-

quately served. (H.R. 2539 retains the "forced sale" provisions of the abandonment process.)

Minimum rate regulation: Prohibits rail carriers from setting rates below a "reasonable minimum" to protect railroads from rate wars and destructive competition.

State certification: Requires that States may only regulate intrastate rail transportation if certified by the ICC. Replaced by direct preemption of State economic regulation of rail transportation.

The commodities clause: Prevents railroads from transporting commodities that they themselves have produced or own.

Recyclable commodities rate regime: Prevents discrimination against the transportation of recyclable materials in rate structures and, for recyclables other than scrap iron or steel, specifies a formula for calculating a rate ceiling.

Valuation jurisdiction: Charges the ICC with valuing all property owned or used by each rail carrier.

Protective services jurisdiction: Provides ICC jurisdiction over protective services (refrigerated cars).

Intermodal ownership restrictions: Prevent railroads from owning other types of transportation companies.

Express service jurisdiction: Provides ICC jurisdiction over express transportation.

Postal Service contract filing and rate jurisdiction.

Interlocking directorate authority: Allows the ICC to prohibit a person from serving as a director or officer of more than one rail carrier.

Procedural recipes for rulemaking proceedings.

Joint board, divisions of Commission, and other decisional process provisions.

Major provisions and activities that need to be continued are transferred to the Department of Transportation to be administered by the Transportation Adjudicatory Panel. These items include:

Maximum rate regulation: This is designed to protect captive shippers from the abuse of market power while allowing railroads the flexibility to earn adequate revenues. It is only applied to common carriage transportation; railroads and shippers have the option of entering into confidential rate contracts that are completely exempt from regulation. Current Staggers Act maximum rate standards are retained. In addition, the TAP is required to complete within one year after enactment the pending ICC proceeding to establish non-coal rate guidelines aimed at providing simplified evidentiary standards of rate-reasonableness proceedings. The bill carries forward the Staggers Act policy that regulatory intervention should be relegated to a role as "safety net" in those relatively rare situations when market forces and shipper-carrier negotiations do not produce a satisfactory business relationship.

Railroad mergers and consolidations: The existing Staggers Act public interest standard, including the conferment of antitrust immunity, is retained. H.R. 2539 elaborates on the existing power to impose conditions (including trackage rights and related compensation arrangements) on the approval of a merger or other regulated transaction, and allows for on-the-record ex parte communications

with the decisionmakers. In addition, the current 31-month schedule for merger proceedings is shortened to a maximum of 270 days.

Various Intercarrier Transactions: The common carrier obligation, lines sales, through routes, joint rate jurisdiction, car hire, car supply and car interchange, terminal trackage rights and reciprocal switching jurisdiction are all transferred to the TAP under existing standards with minor modifications for large Class I railroads' transactions. A new separate procedure without mandatory transaction costs imposed by the agency is established for smaller Class II and Class III railroads' transactions.

Abandonments: The current approval process under the "public convenience and necessity" standard is transferred to the Panel. Where appropriate, the TAP is authorized to alter the scope of a proposed abandonment to afford the best opportunity for the line to be sold and operated as a viable short-line railroad.

Exemption Authority: This critical function that allows for further deregulation through administrative action is transferred to the TAP. The deadline for deciding whether to begin an exemption proceeding is set at 90 days after an application is received, and any ensuing exemption proceedings must be completed within one year. Restrictions on intermodal ownership are eliminated, and the TAP is required to employ its exemption authority "to the maximum extent" consistent with applicable law.

Labor Protection: No change is made to the level of protection in transactions involving Class I railroads. In line purchases and other inter-carrier transactions involving smaller (Class II and Class III railroads), Worker Adjustment and Retraining Notification Act levels of labor protection are imposed.

Summary of Motor Carrier Provisions of H.R. 2539. H.R. 2539 eliminates and then reenacts a revised Motor Carrier Act. The new Motor Carrier Act established in the bill eliminates numerous unnecessary provisions and streamlines many other of the ICC's functions regarding the regulation of the motor carrier industry. Most of the remaining functions are transferred to the Department of Transportation, with limited responsibilities transferred to the Transportation Adjudication Panel.

Existing ICC functions that have been eliminated, deregulated or reformed:

All tariff filings, except for noncontiguous domestic trade are eliminated.

All rate regulation, except for noncontiguous domestic trade and individual household goods movements are eliminated.

Exemption authority to permit administrative deregulation has been substantially broadened, with restrictions only on cargo loss and damage, insurance, safety fitness, and antitrust immunity.

Federal grants of operating authority have been eliminated.

Regulation of Interstate bus routes and discontinuances has been substantially reformed.

Price regulation and tariff filing requirements for office and exhibit moves have been eliminated.

Household goods dispute resolution has been reformed.

Federal resolution of routine commercial disputes has been eliminated.

Possibility of future undercharge claims has been eliminated.

State taxation of interstate bus tickets is prohibited.

Restrictions on intermodal ownership have been eliminated.

Review of motor carrier mergers has been eliminated.

Restrictions on interlining between buses and rail carriers have been eliminated.

Federal regulation of chemical pipelines has been eliminated.

Registration and insurance filings will be streamlined into a single Federal registration and insurance system to eliminate duplicative and burdensome filing requirements.

State regulation of transportation intermediaries eliminated.

Motor Carrier functions transferred to the Department of Transportation. Most of the ICC's current authority to oversee the commercial operation of the motor carrier industry has been transferred to DOT. It is anticipated that these transferred functions will be carried out by the Office of Motor Carriers within the Federal Highway Administration. No new funding is provided for carrying out these responsibilities, but authority to collect and spend currently collected ICC fees is given to the Secretary.

The primary remaining function which is transferred to DOT is motor carrier registration and the setting and maintenance of minimum levels of liability insurance. Foreign motor carrier registration and oversight will also be the responsibility of the Department and the relevant provisions in H.R. 2539 have been strengthened over existing law to enable the proper oversight, implementation and obligations imposed on the United States as part of the North American Free Trade Agreement.

The maintenance of nationwide motor carrier industry commercial rules (such as leasing rules, uniform cargo loss and damage rules, rules for shipper payment, and perfecting security interest) will be transferred to the Department. Since motor carrier transportation is a truly interstate industry, it is critical to the smooth functioning of commerce that there be Federal commercial rules established to ensure that all interstate transportation is subject to the same rules and procedures. Otherwise, a motor carrier would be potentially subject to 50 different rules for operation. While DOT shall oversee and maintain these statutes and regulations, the Committee anticipates that very little effort or activity will be required regarding those matters.

Motor Carrier functions transferred to the Transportation Adjudication Panel. The Panel will receive responsibility for the limited amount of rate regulation for individual movements of household goods, rate regulation and tariff filings which are required for shipments to Hawaii, Alaska, and the offshore territories and possessions, and requirements for reasonable through routes and division of joint rates. Approval and oversight of agreements for antitrust immunity and limited oversight responsibilities for household goods are transferred to the Panel. Final resolution of undercharge claims will be handled by the Panel.

Summary of Significant Motor Carrier Provisions. The bill includes a number of significant policy changes which are summarized below.

Antitrust Immunity for Business Practices. Currently, the motor carrier industry enjoys broad antitrust immunity for many collec-

tive activities of motor carriers as granted by the ICC. At a March 3, 1995 hearing conducted by the Subcommittee on Surface Transportation on the elimination of the ICC, many witnesses urged continuation of antitrust immunity authority as being beneficial to, or at the very least not harmful to, the transportation sector and allowing efficiencies within the industry. It was argued that the trucking industry is unique because nearly all motor carriers are potential competitors. Any cooperative activity would be a potential violation of the antitrust laws. Therefore, antitrust immunity is needed to permit certain types of joint activity that are beneficial. Over the past five decades, certain motor carrier business practices and industry standards have developed which rely on antitrust immunity, including collective ratemaking, joint line and pooling, mileage and classification guides, among others. A few stated that antitrust immunity should be eliminated and that collective activities should be judged under the "Rule of Reason" which would allow beneficial activities which do not hurt competition to continue.

Loss and Damage Claims. Under the Carmack amendment, motor common carriers are liable for loss and damage while goods are in the possession of the carrier. The carrier is liable for the actual loss of provable damages to the property up to the full rates, rates for household goods movements arranged by individuals, classifications and mileage guides. Agreements may be submitted to the Panel for approval under the existing standard, and such approval would exempt parties from antitrust laws in carrying out the agreements. However, the approval period of agreements is limited to three years, at which time the agreement may be submitted for renewal. The Panel shall reapprove the agreement unless it finds that such reapproval is not in the public interest. Agreements shall continue in place until the Panel acts to disapprove them.

Authority for the Panel to grant antitrust immunity is extended to pooling and division of transportation or earnings. Finally, H.R. 2539 provides for continued agent and van line immunity relating to household goods movements. It adds a new protection, however, that permits the Panel to revoke individual agent-van line immunity if maintaining such immunity is not in the public interest.

Motor Carrier and Single State Registration. Currently, both the ICC and the DOT operate separate registration systems which vary in administration. The ICC requires that interstate, for-hire carriers receive a license (operating authority) with the standards for granting of authority limited to a showing of safety fitness and insurance coverage at a specified level. The ICC system is a vestige of when motor carriers were highly regulated and entry was severely restricted. The DOT registration system extends to all carriers, including private and exempt carriers not regulated by the ICC. DOT assigns each carrier an identification number. Carriers are not required to show proof of insurance at the time of DOT registration, nor is any fee currently charged.

The bill continues the two registration systems for a period of 24 months, during which time the Secretary shall conduct a rulemaking and implement changes to consolidate these two registration systems into one system. The new system will serve as a clear-

ing house and depository of information on and identification of all domestic and foreign motor carriers, brokers, freight forwarders and others required to register. The Department will utilize the information in overseeing safety fitness and compliance with required levels of insurance. Registrations will be renewed periodically and the on-line system will be available to state authorities and the public. The Committee does not intend that this new system impose additional burdens or require filings not currently required of carriers.

Review of the single state registration under new section 14504 is made a part of the above rulemaking and certain factors to be considered by the Secretary, including funding for State enforcement and the justification and need for collecting fees by States, are specified. Authority is granted for the Secretary to establish fees in order to cover all costs of operating the new registration system.

H.R. 2539 continues antitrust immunity but contains significant reforms intended to prevent any potential market abuses. New section 13703 of title 49 permits motor carriers to enter into agreements for certain activities, including through routes and joint value of the goods. H.R. 2539 continues this uniform liability regime but directs the Secretary to report to Congress within 18 months on whether an alternative liability system should be implemented. The Department of Transportation will not mediate disputes between shippers and carriers regarding loss and damage claims as the ICC does currently.

Rate Regulation and Filing of Tariffs. Under new section 13701 of title 49, rate regulation is restricted to individual household moves and movements by a water carrier in noncontiguous domestic trade. Through routes and divisions of joint rates must also be reasonable. H.R. 2539 continues to reform and restrict the number and types of transportation for which tariffs must be filed. Under new section 13702 of title 29, tariffs must be filed with the Panel only for noncontiguous domestic trade. Tariffs must be submitted to the Panel and available for inspection by shippers for the transportation of household goods when arranged by an individual.

By eliminating nearly all remaining tariff filings, the bill eliminates any possibility of undercharges since there can be no application of the filed rate doctrine to those rates. For rates continued in tariffs, the bill directs that no undercharges may accrue as a result of such tariffs.

Dispute Resolution. In addition to overseeing the background commercial rules of the motor carrier industry, the ICC currently resolves disputes that arise in such areas. There is no explicit statutory requirement to do so. Rather, the ICC has, in its discretion, chosen to allocate resources, dedicated to resolving disputes that arise in the motor carrier industry. The ICC dispute resolution programs include household goods and auto driveaway carriers, brokers, owner-operator leasing, loss and damage claims, duplicate payments and overcharges, and lumping.

The bill transfers responsibility for all the areas in which the ICC resolves disputes to the Secretary (except passenger intercarrier disputes). The Committee does not believe that DOT should allocate scarce resources to resolving these essentially pri-

vate disputes, and specifically directs that DOT should not continue the dispute resolution functions in these areas. The bill provides that private parties may bring actions in court to enforce the provisions of the Motor Carrier Act. This change will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved—by the parties.

The Committee does not intend that the Secretary have no oversight over these background commercial rules, however. The statutory authority in these areas has been transferred to DOT, as well as regulations promulgated thereunder, so that the Secretary could oversee and revise the functioning of these areas.

Personnel Transfer. The Committee intends that any personnel and functions transferred to DOT should be integrated and performed within DOT's existing Fiscal Year 1996 funding and personnel allocations. The Committee expects that any ICC personnel transferred to DOT could be funded from the transfer of existing fees derived from transferred ICC functions. The Fiscal Year 1996 DOT Appropriations Bill permits the Secretary to utilize any fees collected to fund ICC personnel transferred to DOT. This bill provides the Secretary similar authority.

Since the bill makes no change to current civil service personnel laws, the transfer of personnel will occur under existing rules. ICC personnel that perform new functions transferred to DOT have transfer rights. ICC personnel that perform functions which are not transferred to DOT have no transfer rights.

The Committee understands that upon enactment of this act, the transferor agency, the ICC, shall determine which functions are new functions that transfer to DOT and which functions are currently performed by DOT. The DOT would then have to agree with the ICC as to which functions transfer and which do not. Any disagreements would be resolved by the Office of Management and Budget.

The ICC has informed the Committee that, upon preliminary review of the motor carrier functions transferred to DOT in this bill, it expects that approximately 60 ICC employees will be transferred to DOT (separate from the Panel). There are the employees that would perform functions new to DOT. The ICC estimates that these personnel will result in a cost of $3.743 million for the remainder of FY96 (annualized cost of $5 million).

The ICC estimates that continuing fees in FY96 will total $5.27 million. The ICC's fee schedule is below.

ACTUAL AND PROJECTED APPLICATIONS AND FEES FOR MOTOR CARRIERS

	Historical counts					Fiscal year 1996 estimates [1]		
	Fiscal year 1991	Fiscal year 1992	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995	Count	$ Fee each	$ Fee total
Continuing fees:								
Common carrier applications	4,963	5,090	5,240	5,602	7,609	8,000	300	1,800,000
Property broker applications	3,343	3,192	3,207	2,888	1,978	2,100	300	630,000
Freignt forwarder applications (household goods)	130	123	123	121	67	100	300	30,000
Reinstatement of applications	NA	NA	NA	865	748	725	70	50,750
Insurance fees [2]	NA	NA	NA	63,828	57,000	48,000	10	480,000
Total continuing fees								2,990,750
Projected additional fees:								
Contract carriers filing for common authority [3]						3,000	300	900,000
Mexican carrier applications [4]						4,500	300	1,350,000
Freight forwarder applications (non-household goods—[5]						100	300	30,000
Total additional fees								2,280,000
Total continuing fees and projected additional fees								5,270,750

[1] These estimates are based on an analysis of historical trends and expected legislative changes.

[2] The insurance fee estimate for fiscal year 1996 takes into account the loss of fees for carriers with contract-only authority. It considers, however, the addition of the Mexican carriers that would be obtaining border state authority.

[3] The proposed legislation eliminates the requirement for contract carrier authority. We estimate that at least 10% of the approximately 30,000 carriers with contract-only authority will file for common carrier authority in fiscal year 1996. In fiscal year 1995, the ICC collected fees for contract carrier authority. This table assumes the discontinuation of those fees.

[4] Beginning in fiscal year 1996, Mexican carriers may operate beyond the border commercial zones throughout the four states bordering Mexico (in foreign commerce only). Because this new area of operations (Arizona, California, New Mexico, and Texas) represents a large market, we project that 50% of the approximately 5,000 Mexican carriers with commercial zone authority will convert to border state authority in fiscal year 1996. Additionally, we conservatively estimate a new applicant pool of 2,000.

[5] Currently, non-household goods freight forwarders are not required to file for authority. Proposed legislation would require their registration.

DOT, both in its proposed ICC sunset legislation (H.R. 1436), and during the preparation of this bill, requested a waiver from the current personnel rules to permit DOT greater flexibility in determining which ICC personnel transfer to DOT.

Since the Committee has been informed by the ICC that about 60 personnel would transfer to DOT, and that all of these 60 could be funded from transferred ICC fees credited to DOT, there is no need to waive personnel rules. This is predicated, however, upon representations that only 60 ICC personnel would transfer to DOT.

Summary of Administrative and Procedural Provisions of H.R. 2539. A three-member independent adjudicatory panel is established within the Department of Transportation to administer remaining rail functions and certain motor carrier activities. Panelists will be required to have background and professional standing in the transportation field and in the private sector, and are limited to two complete or partial five-year terms. In addition, holdover tenure of an incumbent pending confirmation of a successor is limited to one year. H.R. 2539 also provides that any pending proceedings will be decided under applicable law on the day before the date of enactment, and that any suits shall be treated in like manner except if a proceeding is remanded by the courts to the Panel, in which case applicable law at the time of the remand would govern. Finally, H.R. 2539 provides authorizations of appropriations for the Panel of $8.41 million for fiscal year 1996 and of $12 million for each of fiscal years 1997 and 1998.

BACKGROUND AND NEED FOR LEGISLATION

History of Rail Deregulation. Since 1980, with the enactment of the Staggers Rail Act, the railroad industry has operated in an essentially deregulated environment. It took the near collapse of the entire industry and possible nationalization of all the nation's railroads to bring this deregulation about.

The rail economic regulatory framework that existed prior to 1980 was developed, for the most part, during the late 19th century and the early 20th century when railroads held a virtual monopoly in many areas. At the time of the ICC's creation in 1887, the market conditions of the railroad industry were markedly different than they are today. Because railroads possess certain characteristics of natural monopolies, in the absence of competition from other modes of transportation, railroads were able to wield enormous power over the shippers and communities they served. For a railroad to withdraw service from an area, for example, threatened the livelihood of entire communities.

The transportation sector has changed dramatically since the time of the ICC's creation. With the emergence of the trucking industry, as well as the pipeline and barge industries, railroads have increasingly faced competition from other modes of transportation. Unfortunately, Federal regulations did not always keep pace with the changing market. The combination of continued onerous Federal regulations and stiff competition from the motor carrier industry proved lethal for the railroads; by the 1970s, the railroad industry was on the brink of financial collapse.

Congress took a number of steps to salvage the industry. First, it created Conrail from the remains of the bankrupt northeast rail

carriers. The successful privatization of Conrail in 1987 has proven this to have been a sound decision. Second, Congress permitted the railroads to discontinue operating passenger rail service, which was producing substantial losses for the private railroads. In 1971, Congress created Amtrak to allow for continued passenger rail service in this country.

Most importantly, though, Congress enacted the Staggers Rail Act of 1980. This landmark legislation deregulated most railroad rates, legalized railroad shipping contracts, simplified abandonments, and stimulated an explosion of service and marketing alternatives that would not have been possible under the Kafkaesque regulatory regime of the pre-Staggers era. In addition, the Staggers Act provided administrative authority to the ICC to further deregulate the industry through the exemption power, which has been employed aggressively since the enactment of Staggers. Because some shippers and communities continue to be dependent upon a single rail carrier and may not have access to alternative modes of transportation, the Staggers Act kept in place certain protections for "captive shippers." These too have worked well to maintain a balanced transportation system.

The Staggers Act has produced a renaissance in the railroad industry. Its return on investment, now approximately 8%, compares favorably to the 4% earned prior to 1980. Railroads have been able to maintain market share at approximately 38% during the last decade in a growing market, and recent indications show that their market share is increasing. Shippers have benefited from the Staggers Act reforms as well, since the railroads' real rates have declined by 1.6% annually since 1980. By allowing greater flexibility in line sales, the Staggers Act helped create several hundred shortline railroads that operate the lines more efficiently and at lower cost than a major carrier could. Finally, through early retirements and voluntary buyouts among both union members and managers, employment decreased from 532,000 in 1980 to 267,000 in 1994.

History of Motor Carrier Deregulation. H.R. 2539 is another important step in a 15-year effort to deregulation the motor carrier industry.

The ICC has been responsible for the regulation of the interstate trucking and bus industries since 1935. Over the years, the regulatory reach of the ICC was extended to cover the granting of operating authority, routes, rate regulation and tariff filings, cargo liability, dispute resolutions and a wide variety of other controls and oversight.

During the past 15 years, as the trucking industry has become increasingly competitive, Congress has taken a series of steps to deregulate the motor carrier and bus industries. The landmark Motor Carrier Act of 1980 and the Household Goods Act of 1980 were the first reductions in federal regulations of these industries. Among other reforms, the "public convenience and necessity" standard for carriers applying for operating authority was modified, but strict entry requirements were still placed on applicants who had to show they were fit, willing, and able and to demonstrate that the proposed service would serve a useful purpose responsive to a public demand or need. The Motor Carrier Act encouraged a more competitive environment and led the ICC to change tariff filing regula-

tions to permit tariff rate reductions and to allow carriers to establish rates for named shippers. Two years later, the Bus Regulatory Reform Act of 1982 was enacted which led to important reforms of the interstate bus industry and in 1986, the Surface Freight Forwarder Deregulation Act included additional reforms.

The 103rd Congress took on an aggressive deregulatory role regarding the motor carrier industry by approving three historic initiatives. First, the Negotiated Rates Act of 1993 related to procedures to resolve the on-going undercharge crisis which arose when bankruptcy trustees or receivers demanded payments from shippers for the difference between a negotiated rate for transportation services which was paid in full by a shipper but was never properly filed by the carrier and the rate contained in a tariff on file with the ICC.

The undercharge situation which necessitated federal legislation highlighted the outdated tariff filing requirements in the current transportation environment. In response, the Trucking Industry Regulatory Reform Act of 1994 (TIRRA) eliminated tariff filing requirements for individually determined rates—which affected up to 90 percent of the 1.4 million tariff filings at the ICC. TIRRA also gave to the ICC the authority to grant exemptions from trucking regulations, which was similar to the rail exemption authority. In addition, the ICC was directed to submit to Congress a report identifying and analyzing all regulatory responsibilities of the Commission and recommendations on which functions could be eliminated or restructured. The Secretary of Transportation was directed to submit to Congress a similar report, including recommendations on whether to reorganize the administration of the functions of the ICC within the Department or some other options. Those reports have been instrumental in creating H.R. 2539.

One final regulatory initiative by Congress in 1994 does not pertain directly to federal ICC trucking regulation but has significant impacts on trucking in our nation generally. Section 601 of the Federal Aviation Administration Act of 1994 preempts State regulation of prices, routes and services by air carriers and carriers affiliated with a direct air carrier through common controlling ownership and all other motor carriers. Prior to 1995, 41 jurisdictions imposed varying levels and forms of economic regulation of intrastate traffic. Congress determined state preemption was in the public interest and necessary to facilitate interstate commerce.

Today, the trucking industry, an essential element to our nation's economic growth and international competitiveness, is vibrant and competitive. The easing of entry, rate and tariff requirements has allowed carriers to be more responsive to changing market conditions and shipper needs. Prior to deregulation, ICC-licensed carriers totalled approximately 14,000. Now, roughly 15 years after the initiation of motor carrier deregulation, that number has grown to 55,000 carriers which generate $82 billion in revenues annually.

Overall, the trucking sector of the U.S. economy represents more than $290 billion in gross revenues. Almost 8 million people are employed throughout the economy in jobs that relate to trucking activity, receiving approximately $227 billion in annual wages. In 1993, 5.1 billion tons of freight were transported by intercity and

local trucks and 871 billion ton-miles were logged by trucks. Over 78 percent of the value of all freight is transported by truck.

The importance of the motor carrier industry to the movement of goods and people around the nation will continue to grow in the future. Motor carriers face intense competition not only from other motor carriers, but also from rail and ocean carriers. The trucking industry has matured to the point that less regulation is required and we should be certain that the policies of the Federal government encourage, and not hinder, continued growth and efficiency in this area.

Conclusion. H.R. 2539 builds on the deregulatory policies that have promoted growth and stability in the surface transportation sector. For the rail industry, only regulations are retained that are necessary to maintain a "safety net" or "backstop" of remedies to address problems of rates, access to facilities, and industry restructuring. The bill keeps bureaucracy and regulatory costs at the lowest possible level, consistent with affording remedies only where they are necessary and appropriate. Remaining rail and motor carrier activities combined will cost no more than the $8.4 million provided in the FY 1996 DOT appropriations bill conference report. This compares favorably with the $33 million provided to the ICC in FY 1995. Finally, termination of the ICC is effective upon enactment, in contrast to previous sunset efforts (i.e., CAB), that followed a more gradual approach.

HEARINGS

The Subcommittee on Railroads held two hearings on abolishing the Interstate Commerce Commission and the subsequent transfer of any retained functions to other agencies, such as the Department of Transportation and the Department of Justice.

On January 26, 1995, the Subcommittee held a hearing on the disposition of the ICC's jurisdiction over rail mergers. Testimony was received from the following witnesses: Mr. Steven C. Sunshine, Deputy Assistant Attorney General, U.S. Department of Justice; Mr. Frank Kruesi, Assistant Secretary for Policy, Department of Transportation; Honorable Gail McDonald, Chairman, Interstate Commerce Commission; Mr. Robert Krebs, Chairman and CEO, Santa Fe Pacific Corporation; Mr. James Hagen, Chairman and CEO, Consolidated Rail Corporation; Mr. John Shannon, Vice President-Law, Norfolk Southern Corporation; Honorable Drew Lewis, Chairman and CEO, Union Pacific Corporation; Honorable James Florio, Chairman, Save Transit and Rail Transportation; Mr. Edward Emmett, President, National Industrial Transportation League. Additional testimony was also received from Mr. Edward Wytkind, Chairman, Transport Trades Division, AFL–CIO and Mr. William Mahoney, attorney, who accompanied Mr. Florio.

The Subcommittee held a second hearing on February 22, 1995, on how to dispose in any sunset legislation of the ICC's diverse non-merger rail jurisdiction. Persons testifying at this hearing were: Mr. Edwin Harper, President and CEO, Association of American Railroads; Mr. James Hagen, Chairman and CEO, Consolidated Rail Corporation; Mr. David R. Goode,, Chairman, President, and CEO, Norfolk Southern Corporation; Mr. Gilbert M. Robert, Executive Director, Florida Tri-County Commuter Authority, on be-

half of American Public Transit Association; Mr. Reilly McCarren, President, Gateway & Western Railroad, on behalf of Regional Railroads of America; Mr. William Loftus, President, American Short Line Railroad Association; Mr. Sonny Hall, President, Transportation Workers Union and President, Save Transit and Rail Transportation, accompanied by Mr. William Mahoney, attorney, and Mr. Greg Lawley, General Counsel; Mr. Edward Emmett, President, National Industrial Transportation League; Mr. Richard Dauphin, President, Western Coal Traffic League; Mr. Joseph Lema, Vice President-Transportation, National Mining Association; Mr. Russell J. Kocemba, Transportation Manager, General Mills, Inc., on behalf of National Grain and Feed Association; Fred R. Sasser, President, Chicago Freight Car Leasing Company, on behalf of Railway Progress Institute; Robert Granatelli, Manager, North American Transportation, Himont USA, Inc., on behalf of the Society of the Plastics Industry, Inc.; Mr. Barry Hill, Associate Director, Transportation Issues, General Accounting Office, accompanied by Mr. Frank Mulvey, Assistant Director, GAO; Honorable Gail McDonald, Chairman, Interstate Commerce Commission, accompanied by Vice Chairman Linda Morgan, Commissioner J.J. Simmons, and Commissioner, Gus Owen; Honorable Joseph Canny, Deputy Assistant Secretary of Transportation for Transportation Policy. Additional testimony was received for the record from: Mr. K. Earl Durden, President, Rail Management & Consulting Corporation; Mr. Thomas M. Downs, President, National Railroad Passenger Corporation (Amtrak); Mr. Kevin Kaufman, President, North America Freight Car Association; Mr. Gordon P. MacDougall, attorney; Mr. Richard T. Mueller, General Manager, Wyndmere Farmers Elevator; Ms. Mary Ann Oster, Research Consultant, Oster Researching Services; Honorable Earl Pomeroy, Member of Congress from North Dakota; Mr. T.L. Priest, Corporate Commerce Manager—Logistics, Coors Brewing Company, on behalf of the Committee Against Revising Staggers; Mr. John P. Prugh, President, U.S. Clay Producers Traffic Assn., Inc.; Andrew F. Reardon, Vice President-Law & Human Resources, TTX Company; Mr. Steven Drege, Executive Vice President, North Dakota Grain Dealers Assn.; and Frederick L. Webber, President and CEO, Chemical Manufacturers Association.

The Subcommittee on Surface Transportation held a hearing on the elimination of the ICC on March 3, 1995. Testimony was received from: the Honorable Gail McDonald, Chairman of the ICC; Mr. Joseph Canny, Deputy Assistant Secretary for Transportation Policy, Department of Transportation; Mr. Barry Hill, Associate Director, Transportation Issues, Resources Community and Economic Development Division, General Accounting Office; Mr. Thomas J. Donohue, President and Chief Executive Officer, American Trucking Associations; Mr. K. Michael O'Connell, Counsel, Owner-Operated Independent Drivers Association, Inc.; Mr. James C. Harkins, Executive Director, Regular Common Carrier Conference; Mr. Ed Emmett, President, National Industrial Transportation League; Mr. Charles A. Gerardi, President, National Small Shipment Traffic Conference; Mr. Edward Wytkind, Executive Director, Transportation Trades Department, AFL–CIO; Mr. Theodore Knappen, Greyhound Lines, Inc.; Mr. Richard A. Allen, General Counsel,

American Bus Association; Mr. Maurice Greenblatt, Chairman of the Board, United Van Lines, Inc.; and Mr. Jerry Gereghty, incoming President, Transportation Brokers Conference of America.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 102. Rail provisions

This section revises and reorganizes the rail portions of subtitle IV of title 49, United States Code, as follows.

SUBTITLE IV—INTERSTATE TRANSPORTATION

Part A—Rail

Chapter 101—General Provisions

Section 10101. Rail transportation policy

This provision continues the relevant portions of 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 by the Transportation Adjudication Panel (TAP).

Section 10102. Definitions

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 to railroad provisions.

Section 10103. Remedies are exclusive

To reflect the replacement of the Staggers Act system of optional certification of State regulatory agencies to administer economic regulation of railroads using Federal standards, this provision is conformed to the bill's direct and general pre-emption of State jurisdiction over economic regulation of railroads. As used in this section, "State or Federal law" is intended to encompass all statutory, common law, and administrative remedies addressing the rail-related subject matter jurisdiction of the Transportation Adjudication Panel. The bill is intended to standardize all economic regulation (and deregulation) of rail transportation under Federal law, without the optional delegation of administrative authority to State agencies to enforce Federal standards, as provided in the relevant provisions of the Staggers Rail Act.

Chapter 103—Jurisdiction

Section. 10301. General jurisdiction

This provision replaces the railroad portion of former Section 10501. Conforming changes are made to reflect the direct and complete pre-emption of State economic regulation of railroads. The changes include extending exclusive Federal jurisdiction to matters relating to spur, industrial, team, switching or side tracks formerly reserved for State jurisdiction under former section 10907. The former disclaimer regarding residual State police powers is eliminated as unnecessary, in view of the Federal policy of occupying

the entire field of economic regulation of the interstate rail transportation system. Although States retain the police powers reserved by the Constitution, the Federal scheme of economic regulation and deregulation is intended to address and encompass *all* such regulation and to be completely exclusive. Any other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation. The abolition of railroad securities jurisdiction formerly administered by the ICC places the railroad industry for securities purposes in the same position as other industries—being subject to Federal securities regulation by the Securities and Exchange Commission, and as applicable, State securities or "blue sky" laws. It is not consistent with the intent to have all economic regulation of rail transportation governed by uniform Federal standards for State securities laws to be employed as a means of reasserting preempted forms of economic regulation.

This section also replaces former Section 10504, regarding the relationship between Federal economic regulation of rail transportation and State or local mass transportation activities, such as commuter rail operations. In keeping with the abolition of all Federal economic regulation of rates, entry, and exit in the rail passenger transportation field, this provision excludes mass transportation operations from the TAP's jurisdiction except for the limited purpose of matters relating to access to railroad facilities and infrastructure. The Committee does not intend for this section to alter any existing law as to the coverage and scope of the Federal statutes governing railroad retirement benefits and railroad unemployment insurance, and the Railway Labor Act.

Section 10302. Authority to exempt rail carrier transportation

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 makes it an explicit part of the agency's statutory duty to utilize exemptions to the maximum extent permissible under the law. The revised provision sets a 90-day time limit for the agency to decide whether to conduct a proceeding, and a one-year limit on concluding any ensuing administrative proceeding. Parallel time limits are included for agency action on, and completion of proceedings regarding, the revocation of exemptions. It is anticipated that the TAP will follow prior ICC practice of acting expeditiously on individual, transaction-specific exemption requests, and will reserve more elaborate notice-and-comment proceedings for "class" exemptions which suspend active regulation of a broad area of rail transportation on a permanent and generic basis. The new provision also eliminates former restrictions on use of the exemption power in matters relating to intermodal ownership, reflecting the economic reality that other modes of transportation are sufficiently competitive (as is the rail industry) as to make the former categorical immunization of intermodal ownership from administrative exemption obsolete and unnecessary.

Chapter 105—Rates

Section 10501. Standards for rates, classifications, through routes, rules, and practices

This provision replaces the rail portions of former sections 10701 and 10701a. It retains the basic Staggers Act standards for evaluating reasonableness of rail rates, including criteria related to market dominance (the absence of effective competition) and the need for rail carriers to earn adequate revenues. Subsection (d)(3) requires the TAP to complete within one year after enactment the pending ICC proceeding to establish noncoal rate guidelines aimed at providing simplified evidentiary standards for use in rate-reasonableness proceedings. Language in the former section regarding reasonable minimum rates is deleted to conform with the abolition of minimum rate jurisdiction.

Section 10502. Authority for rail carriers to establish rates, classifications, rules, and practices

This provision replaces and retains the rail portions 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. Unnecessary details in the former section are also deleted.

Section 10503. Authority for rail carriers to establish through routes

This section 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. Language dealing with water carrier-rail carrier through routes is deleted.

Section 10504. Authority and criteria: rates, classifications, rules and practices established by the panel

This section replaces the rail portions of former section 10704. It retains for the TAP the former ICC authority to review and order changes in rates, classifications, rules, and practices and to prescribe such matters. In keeping with the abolition of minimum rate jurisdiction, the portions of the former provision addressing this subject have been deleted. Also deleted are details regarding the relationship between rates paid for service to different shippers, communities, ports, and regions. This aspect of the pricing of rail transportation service is adequately addressed by the retained prohibitions on unreasonable discrimination.

Section 10505. Authority: through routes, joint classifications, rates, and divisions prescribed in panel

This section 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. The new provision omits former references to tariff suspension procedures abolished elsewhere in the bill.

Section 10705a, which provided specialized procedures for joint rate cancellations and surcharges, is being repealed as unneeded.

When added to the statute by the Staggers Act in 1980, it was intended to address the ICC's pre-Staggers Act insistence that all railroads participating in a movement subject to a joint rate concur in any change in either the joint rate or the division of revenues from the rate. Since that time, the ICC has modified its position to permit independent rate-setting actions authorized under section 10705, and the rail industry has adopted many more flexible forms of rate and contract arrangements. As a result, the extremely complex surcharge provisions of section 10705a—which were not intended to replace the scope of carrier authority in joint rate matters governed by section 10705, but to provide a clear and timely method for achieving at least a minimum amount of ratemaking flexibility—have become redundant and unnecessary. Any remaining issues arising from changes in through rates and divisions can be adequately addressed under the Panel's continuing authority in new section 10505. The Committee intends that the Panel continue the policy of granting railroads the maximum possible freedom to set rates, routes, and divisions, so long as these actions are not anticompetitive.

The authority in former section 10705(g) to prescribe emergency through routes is retained in section 10923.

Section 10506. Rate agreements: exemption from antitrust laws

In replacing the rail portions of former section 10706, this provision maintains the existing system of approval of multi-carrier rate making agreements and scope of immunity, once approved by the TAP, from challenge under the antitrust laws. Changes from the former section 10706 are limited to elimination of obsolete or executed provisions.

Section 10507. Determination of market dominance in rail rate proceedings

This provision, which replace 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 are deleted in conformity with the abolition of minimum-rate jurisdiction. This section also retains the statutory formula from former section 10705a(m) for agency computation of the Rail Cost Adjustment Factor (RCAF). Although relevant to administrative rate-reasonableness proceedings, this cost index has also become part of the commercial dealings between shippers and carriers under the highly successful contract rate authority granted by the Staggers Act. The RCAF is frequently used as a benchmark for inflation-indexing price provisions of long-term rail transportation contracts.

Section 10508. Inflation-based rate increases

This provision retains the agency's authority under former section 10712 to compute and publish a quarterly percentage rate index.

Section 10509. Contracts

This provision 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 administrative 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. As noted in connection with new section 10901, elimination of administrative procedures related to contract rates themselves does not mean that carriers may escape their common carrier service obligations generally.

Subchapter II—Special Circumstances

Section 10521. Government traffic

This provision, 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.

Section 10522. Emergency rates

This section retains the agency power to require reduced rates to provide relief during emergencies under former section 10724.

Section 10523. Car utilization

This provision replaces former section 10734, while retaining the authority for rail carriers to establish premium charges for special services outside the normal structure of common-carrier rates otherwise applicable to a particular rail movement.

Subchapter III—Limitations

Section 10541. Prohibitions against discrimination by rail carriers

This section 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.

Section 10542. Facilities for interchange to traffic

This replacement 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 cor-

nerstone 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.

Section 10543. Continuous carriage of freight

In replacing former section 10745, this section (like the preceding provision) retains the legal obligation of rail carriers to maintain continuous means for the efficient handling of freight that travels over more than one carrier's lines, and the correlative prohibition against carrier action to impede or prevent such continuous carriage.

Section 10544. Transportation service or facilities furnished by shipper

This provision, 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. The Committee does not intend to disturb any existing arrangements or regulations, including those adopted in negotiated-rulemaking proceedings, on this subject.

Section 19545. Demurrage charges

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 car for delay in its return to the owner.

Section 10546. Designation of certain routes by shippers

This section replaces former section 10763 regarding the rights of shippers to designate routes to be utilized in moving their rail shipments.

Chapter 107—Licensing

Section 10701. Authorizing construction and operation of rail lines

1. Construction and operation cases

Subsections (a) through (c) retain the current Federal jurisdiction under former section 10901 over authority to construct, acquire or operate lines, when the applicant is a large (Class I) railroad. Transactions of this type involving smaller railroads are governed by a new separate provision, Section 10702, discussed below. The new Section 10701 retains existing discretionary agency authority to impose labor protection (mandatory severance and salary and benefit protection) requirements for employees affected by construction and line-acquisition transactions by Class I railroads.

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.

Section 10702. Finance and construction transactions by Class II and Class III rail carriers and noncarriers

1. Construction and operation cases

This new provision delineates the authority of the agency to approve 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 10710, establishes a clear statutory division between transactions involving large Class I railroads on one had and small 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.

2. Acquisitions of control and other inter-carrier transactions

Section 10702 also replaces the regulatory authority formerly exercised under Section 11343 over inter-carrier transactions, as to transactions that involve only Class II and Class III railroads. This is intended to provide a clearer delineation of the applicable standards as between large carrier and smaller railroad transactions. Class II and Class III transactions involving acquisitions of corporate control, transfers of trackage rights, and similar matters, are to be governed exclusively by the new provision, and instead of being subject to optional labor protection of up to 6 years' pay per employee under former section 10901, are instead required to provide for affected employees the notice and severance arrangements now mandated for industry generally under the Worker Adjustment and Retraining Notification Act.

The carriers subject to this specialized provision are Class II and Class III railroads. Under current ICC regulations, Class III railroads are those having adjusted annual operating revenues of less than $20 million. A Class II railroad is one with adjusted annual operating revenues of $20 million to $250 million. Although the creation of the hundreds of small railroads born in the rationalization of the major trunk carriers' route systems after the Staggers Act is classically perceived as involving primarily "short-line" railroads (usually Class III carriers), the Class II railroads also play a key role in keeping rail lines in service to shippers, when the

lines would probably have been permanently abandoned by a higher-cost Class I trunk carrier. In addition, when a struggling shortline (Class III) operation can survive only with an infusion of capital, the Class II carriers often stand in the best position as rescuers of a floundering Class III railroad. Against this background, the Committee considers it crucial to avoid imposing the large and potentially fatal costs of unfunded labor protection benefit mandates on Class II and Class III transactions. To impose such costs would only increase the already substantial risk that the rail lines in question will be permanently abandoned once they have been removed from the route system of a major Class I railroad.

Section 10703. Filing and procedure for notice of intent to abandon or discontinue

This provision, which replaces former sections 10903 and 10904, streamlines and modernizes the processing of applications for the abandonment or discontinuance of service on a rail line. The primary goal of the reforms contained in this section is 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.

The agency's powers include the option to require in appropriate cases 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. To provide maximum flexibility in addressing situations of this type, the agency may either require that the length of rail line proposed for abandonment be increased, require that trackage rights be included with the proposed abandonment to maximize competitive opportunities for a prospective shortline operator, or require some combination of enlarged abandonment and trackage rights. Labor protection requirements now applicable to abandonments are not changed from existing law. The agency also retains the authority to disapprove a proposed abandonment or discontinuance if not consistent with the public convenience and necessity.

Section 10704. Offers to purchase to avoid abandonment and discontinuance

This provision, which replaces former section 10905, governs so-called "forced sales" of lines proposing 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. Experience since the enactment of the Staggers Act has shown that, although outright sale of lines through this process can be an important means of assuring continued rail service under new private-sector management, the subsidy procedure is very cumbersome, rarely employed, and requires considerable continuing regulatory supervision by the agency. In keeping with the goal of the bill to minimize the need for Federal regulation, one-time outright sales, rather than continuing policing of subsidy arrangements, are clearly

the preferable method of keeping lines in operation under private-sector management with a minimum of regulatory intervention.

Section 10705. Offering abandoned rail properties for sale for public purposes

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 proposed for up to 6 months to allow for the pursuit of such alternatives.

Section 10706. Exception

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. Former section 10907(b) is eliminated to conform to general pre-emption of State economic regulation of rail carriers. Although this means that the spur, industrial, and other peripheral tracks formerly reserved for State jurisdiction will now be within the exclusive authority of the Federal agency, the Committee expects the agency to minimize regulatory burdens by utilizing its exemption power wherever possible with respect to these tracks formerly excluded from its jurisdiction.

Chapter 109—Operations

Section 10901. Providing transportation, service, and rates

This section replaces former section 11101, but retains the existing legal duty of a rail carrier to provide transportation upon reasonable request—the "common carrier obligation." Subsection (a) also clarifies certain aspects of the common carrier obligation in light of the repeal of the limited administrative complaint procedures for challenging contract (non-common-carrier) rail rates. As under former section 11101, a person requesting common-carrier service from a railroad is not denied his legal due by the carrier if the railroad declines to respond immediately to the request due to a prior contractual commitment to another shipper. The inclusion of the qualification that the responding carrier may invoke the defense that it is responding to prior "reasonable" commitments under contractual arrangements is not intended to imply any retraction of or limitation on the immunity of contract rates from rate-reasonableness challenges—a key feature of the contract rate regime since its creation by the Staggers Act. Instead, the focus on "reasonable" contractual commitments is intended to clarify that, although a casual requester of service cannot legally demand equal treatment with another shipper who has made a prior contract for service, the carrier may not render itself incapable of reasonably responding to such casual requests for common carrier service, such as by effectively divesting itself of control of its car fleet through committing all or virtually all of the fleet under prior contracts.

In lieu of the former duty to quote rates in the form of a tariff pursuant to former sections 10761 and 10762, the new provision requires the carrier to quote rates on request in writing or by elec-

tronic means. Any increase in a quoted rate must be preceded by written notice from the carrier for a period of time prior to the effectiveness of the rate change to be specified by agency regulation. This last matter is delegated to the agency's discretion to allow greater flexibility in modernizing and conforming notification and effectiveness procedures to changes in business practices, such as electronic data interchange.

Section 10902. Use of terminal facilities

This section 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.

As noted in connection with section 10301, public mass transportation authorities are to be excluded from the most economic regulation under the amended statute. A specific exception is made in section 10301(c) for matters arising under sections 10902 an 10903. These are provisions dealing with access to or use of railroad facilities and infrastructure.

Section 10902 retains the existing agency power to order access to terminal facilities, including main-line tracks a reasonable distance from the terminal. Under the statute as it would be amended by this bill, freight as well as passenger railroad operators could invoke this section in order to seek mandatory access to a freight railroad's terminal facilities and lines in close proximity to those facilities, based on a public-interest standard. Where the applicant for relief under section 10902 is a public mass transportation authority, as contemplated by section 10301(c), it is the Committee's expectation that the public interest standard would virtually always be satisfied, because the commuter rail or other mass transportation authority embodies the public policy decision of the State to devote resources to the known benefits of commuter rail and other mass transportation services.

Section 10903. Switch connections and tracks

In replacing former section 11104, this section 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 complain to the agency.

Subchapter II—Car Service

Section 10921. Criteria

This section replaces former section 11121, retaining existing authority to oversee and require reasonable rules and practices regarding car service. References to tariff requirements are deleted.

Section 10922. Compensation and practice

This section 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. The

authority of the ICC to adopt its final rules in Ex Parte No. 334 (Sub-Nos. 8 and 8A) is hereby confirmed.

Section 10923. Rerouting traffic on failure of rail carrier to serve the public

This section, 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. Subsection (c) carries forward existing powers under former section 10705(g) for the agency to prescribe temporary through routes in emergencies. This new section is also intended to provide the agency with general emergency authority, even after the repeal of former section 11123.

Section 10924. War emergencies; embargoes imposed by carriers

This section replaces former section 11128, retaining existing powers of the agency to give preference or priority to military or war-related traffic at Presidential request.

Subchapter III—Reports and Records

Section 10941. Definitions

This section replaces the relevant rail definitions of former section 11141.

Section 10942. Uniform accounting system

This section retains the agency's power under former section 11142 to prescribe standard accounting procedures for rail carriers. To conform to the Staggers Act policy explicitly referenced in other accounting provisions, the section adds a new directive that the agency utilize, to the maximum extent feasible, generally accepted accounting principles.

Section 10943. Depreciation charges

This section retains the agency's authority over rail carrier depreciation procedures under former section 11143.

Section 10944. Records: form; inspection; preservation

This section 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.

Section 10945. Reports by rail carriers, lessors, and brokers

This section retains existing agency authority to require annual and other reports by regulated carriers under former section 11145. references to protective services are deleted in light of the abolition of agency jurisdiction over such matters.

Subchapter IV—Railroad Cost Accounting

Section 10961. Implementation of cost accounting principles

This section 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.

Section 10962. Rail carrier cost accounting system

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.

Section 10963. Cost availability

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.

Section 10964. Accounting and cost reporting

This section replaces former section 11166, 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.

Chapter 111—Finance

Section 11101. Equipment trusts; recordation; evidence of indebtedness

This section replaces former section 11303, governing recordation of security interests and other financial instruments affecting railroad rolling stock and locomotives. The new TAP 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 TAP 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 language of the new section is also modernized to conform to the terminology of the Uniform Commercial Code and related statutes, and to facilitate international recognition of security interests in rail cars and locomotives registered to foreign individuals and corporations.

Section 11121. Scope of authority

This section replaces former section 11341. It reenacts existing law as to the scope of the agency's authority over approval and implementation of mergers and other control transactions, including the preemptive effect of the Federal agency's approval on otherwise applicable law from any source. The requirement that mergers be

approved by shareholders is deleted to conform with the general design of abolishing separate railroad securities jurisdiction and relying upon general Federal securities laws administered by the Securities and Exchange Commission.

Section 11122. Limitation on pooling and division of transportation or earnings

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.

Section 11123. Consolidation, merger, and acquisition of control

This section replaces former section 11343, but only with respect to Class I rail carriers. (Class II and Class III carriers' finance transactions are to be governed by new section 10702, discussed earlier.)

The extent of agency jurisdiction over inter-carrier transactions involving mergers, trackage rights, and similar transactions remains essentially the same as under the former provision. However, language addressing the internal procedures of corporations participating in transactions subject to this section dealing with shareholder approval is deleted. This conforms with the bill's broader policy of abolishing specialized (and duplicative) railroad securities jurisdiction, because the laws and regulations administered by the Securities and Exchange Commission adequately address this subject.

Section 11124. Consolidation, merger, and acquisition of control: conditions of approval

This section replaces former section 11344, and lists the specific criteria to be used in deciding whether and on what conditions to approve proposed mergers and related transactions involving Class I railroads. The sole change to the criteria is broadening subsection (b)(5) to include evaluation of adverse competitive effects to include effects on competition among rail carriers in the national rail system, not just "in the affected region."

A second change from present law elaborates on the existing power to impose conditions on the approval of a merger or other regulated transaction. The bill explicitly authorizes imposition of conditions requiring divestiture of parallel tracks or requiring the granting of trackage rights. It also requires that, if trackage rights are required, the agency must provide for compensation arrangements that ensure the alleviation of the underlying anticompetitive effects sought to be avoided by imposing the trackage rights conditions.

The principal procedural 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.

Section 11125. Consolidation, merger, and acquisition of control: procedure

This section replaces former section 11345, setting forth the maximum time limits for processing control and merger applications. The prior statutory limit of 31 months for major rail transactions has been reduced to a maximum of 270 days.

Section 11126. Employee protective arrangements in transactions among rail carriers

This provision, which replaces former section 11347, continues the requirements for mandatory imposition of labor protection benefits (severance and salary and benefit protection) in transactions between Class I railroads. These include mergers, trackage rights transactions, and abandonments.

Section 11127. Supplemental orders

This section replaces without alteration the existing agency power under former Section 11351 to exercise continuing jurisdiction over the implementation of regulated mergers or other intercarrier transactions.

Chapter 113—State-Federal Relations

Section 11301. Tax discrimination against rail transportation property

This provision replaces without substantive change former Section 11503, which forbids discriminatory State taxation of rail property as an unreasonable burden on interstate commerce.

Section 11302. Withholding State and local income tax by rail carriers

This section 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.

Chapter 115—Enforcement: Investigations, Rights, and Remedies

Section 11501. General authority

This section reenacts without change the prior rail-related enforcement powers delineated in former section 11701.

Section 11502. Enforcement by the panel

This section replaces former section 11702, describing the agency's power to enforce its orders in court.

Section 11503. Enforcement by the Attorney General

This section replaces former section 11703, delineating the Attorney General's authority to take judicial enforcement actions and duty to take such actions on the agency's request. The former authorization for the Attorney General to initiate civil actions regard-

ing the rate-discrimination requirements of the statute is eliminated as unnecessary.

Section 11504. Rights and remedies of persons injured by rail carriers

This section retains the rail portions of former section 11705, describing procedural requirements and other matters concerning civil actions to obtain damages for violations of agency orders other than for the payment of money.

Section 11505. Limitations on actions by and against rail carriers

This provision reenacts without significant change the existing statutes of limitations on court actions involving rail carriers, formerly set out in section 11706.

Section 11506. Liability of rail carriers under receipts and bills of lading

This section reenacts the rail portions of the statutory regime governing carrier liability for loss and damage to shipments, known as the "Carmack Amendment" from its antecedent legislation, previously recodified as section 11707. Along with the facilities access provisions discussed earlier, this is the only provision of the revised statute still made applicable to rail *passenger* transportation, as well as freight service. Changes are also made in new subsection (c)(3) to clarify the option of shippers and carriers, by mutual agreement, to establish either a declared value limit on liability for loss or damage to the shipment or to provide for a deductible as part of their liability arrangements. The explicit authority to establish declared-value limits and deductible limits replaces former section 10730(c).

Chapter 117—Civil and Criminal Penalties

Section 11701. General civil penalties

This section retains applicable rail portions of former section 11901, regarding civil penalties for violations of agency orders. Conforming changes are made to reflect matters eliminated from agency jurisdiction, such as protective services (refrigerated cars).

Section 11702. Interference with car supply

This section reenacts the sanctions authorized in former section 11907 or bribery-related conduct intended to influence the allocation of available rail car supply.

Section 11703. Record keeping and reporting violations

This section retains the penalties specified in former section 11909 for violation of agency orders and requirements on record keeping and reports.

Section 11704. Unlawful disclosure of information

This section contains the existing penalties for disclosure of confidential information related to rail shipments, as set out in former section 11910.

Section 11705. Disobedience to subpoenas

This section retains existing penalties for refusal to comply with agency subpoenas, as provided in former section 11913.

Section 11706. General criminal penalty when specific penalty not provided

This provision incorporates existing general penalty provisions of former section 11914.

Section 11707. Punishment of corporations for violations committed by certain individuals

This section retains existing law from former section 11915, making corporations liable for acts and omissions of specified types of corporate officials, in addition to any liability of the individuals themselves.

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

This section creates a new Motor Carrier Act by amendment 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 Panel.

Chapter 131—General Provisions

Sec. 13101. Transportation policy

This section maintains the current national transportation policy for the Motor Carrier Act. The Committee intends that the current transportation policy should be interpreted as determining what matters are in the public interest.

Sce. 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. A change has been made to the definition of noncontiguous domestic trade to eliminate a limiting reference to motor-water shipments so that the definition refers to all shipments between the mainland United States and offshore States, possessions and territories.

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.

Chapter 133—Administrative Provisions

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 to any functions under the Motor Carrier Act transferred to the Panel. The Committee intends that powers conferred to the Secretary under this section that are beyond those general powers already conferred upon the Secretary in title 49 should only apply to the implementation of part B of Section IV of title 49. This is intended to confer upon the Secretary the same powers to enforce the Motor Carrier Act that the ICC had to enforce its provisions.

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.

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.

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.

Chapter 135—Jurisdiction

Sec. 13501. General jurisdiction

This section transfers to the Secretary and the Panel the current ICC jurisdiction over transportation by motor carriers. This section defines which carriers are subject to the Motor Carrier Act.

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.

Sec. 13503. Exempt motor vehicle transportation in terminal areas

This section preserves the current jurisdictional exemptions for operations conducted in a terminal area.

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.

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.

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.

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.

Sec. 13508. Limited authority over cooperative associations

This section preserves current law regarding authority over cooperative associations.

Subchapter II—Water Carrier Transportation

Sec. 13521. General jurisdiction

This section defines the jurisdiction of the Secretary insofar as water transportation is concerned. This includes both port-to-port transportation by a water carrier and intermodal transportation by a water and motor carrier between two states, territories, or possessions of the United States.

Subchapter III—Freighter Forwarder Service

Sec. 13531. General jurisdiction

This section transfers to the Secretary jurisdiction over all freight forwarders and certain household goods freight forwarders.

Subchapter IV—Authority to Exempt

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 authority over the 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 section 13703 and 13907. The Committee intends that the Secretary and the Panel should use the exemption authority to continue the streamlining and deregulation of the Motor Carrier Act.

Chapter 137—Rates and Through Routes

Sec. 13701. Requirements for rates, classifications, through routes, rules, and practices for certain transportation

This section virtually eliminates existing ICC motor carrier rate regulation by limiting the rate reasonableness requirement only to household goods movements paid for by the householder and move-

ments by or with a water carrier in noncontiguous trade. The section maintains the current basic rate reasonableness requirements for those two limited areas and transfers the regulatory authority to the Panel to prescribe a rate when the carrier's rate is not reasonable.

The requirement for noncontiguous domestic trade includes rates for both port-to-port movements by water carriers or intermodal movements by water or motor carriers. Currently, port-to-port movements are regulated by the Federal Maritime Commission under the Intercoastal Shipping Act of 1933 and the Shipping Act of 1916. This bifurcated jurisdiction has created much legal confusion and promoted forum shopping. By consolidating the regulation of these trades in a single panel, a more consistent and efficient transportation policy can be achieved. Under section 13702(b)(3), a carrier may increase or decrease a base rate by not more than 10 percent of the base rate in effect one year before that date and the new rate is considered reasonable. This 10 percent zone may be increased or decreased based on the change in the Procedures Price Index in the prior year period. However, this zone of reasonableness for rate increases does not mean that the base rate cannot be challenged as unreasonable.

Sec. 13702. Tariff requirement for certain transportation

This section narrows the requirement to maintain tariffs to only two categories of traffic; rates for movements by or with a water carrier in noncontiguous domestic trade and movements of household goods paid for by the householder. Tariff filings with the Panel are required only for a movement by or with a water carrier in noncontiguous domestic trade and the requirements for the comparison of tariff are streamlined and clarified. Carriers providing transportation of household goods paid for by the householder must publish tariffs and maintain such tariffs for inspection, are bound by the terms of its tariffs, and transportation without a tariff is prohibited. This section also precludes the possibility of any future undercharges by eliminating future tariff filings and precluding any remaining filed tariffs from creating undercharges.

A carrier providing intermodal services in this trade is not required to state separately or otherwise reveal in tariff filings the inland divisions of a through rate. This section consolidates the current ICC and Federal Maritime Commission tariff filing system for the noncontiguous domestic trades into a single tariff filing system. This tariff filing is maintained to ensure that similarly situated shippers are treated the same by carriers based on the type and volume of cargo. It is not to be used for anticompetitive purposes such as "price-watching," where carriers tend to follow the rates of the highest priced carrier. The Panel should take whatever steps are necessary to ensure that the tariff filing system is not used for anticompetitive practices such as this.

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 paid for by the householder, classifications and mileage guides and certain other activities. Agreements may be approved only if the Panel finds it is in the public interest. The approval would expire three years after the approval date. Approvals may be renewed unless renewal is not in the public interest.

The Committee intends that agreements currently approved shall continue as approved for three years after the date of enactment. The Committee further intends that at the end of a three year approval period, approved agreements would continue in effect until the Panel completes its consideration of the renewal request. While a renewal request is pending, the prior approval will still apply.

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.

Sec. 13705. Requirements for through routes among motor carriers of passengers

This section preserves current law providing that intercity bus companies may establish through routes with each other and such through routes must be reasonable. It authorizes the Panel to prescribe through routes and the conditions under which they are operated when necessary to enforce the requirement for rate reasonableness. This section permits the Panel to resolve disputes between bus carriers involving their operations.

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.

Sec. 13707. 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.

Sec. 13708. 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.

Sec. 13709. 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).

Sec. 13710. 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. Specifically, it

expands the unreasonable practice relief by removing the September 30, 1990 cut-off date.

Sec. 13711. Government traffic

This section preserves current law that transportation may be provided for the U.S. Government at discounted rates.

Sec. 13712. Good 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.

Chapter 139—Registration

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.

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 provides for the safety requirements for 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.

Sec. 1393. 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 to 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.

Sec. 13904. Registration of motor carriers 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 to comply with requirements imposed by the Secretary and Panel.

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.

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.

Sec. 13907. Household goods agents

This section preserves the current law that grants agent-van line arrangements antitrust immunity, including providing for agent-van line immunity for former "second and third proviso" moves. 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.

Sec. 13908. Registration and other reforms

This section directs the Secretary, in cooperation with the States and after notice and opportunity for public comment, to issue regulations within 24 months to consolidate the current ICC registration system, the current registration system, the Single State Registration System and the current DOT insurance registration system into one unified, computerized system. The Secretary is permitted to preempt States from imposing substantially similar requirements upon carriers. The Secretary may establish fees to fully support the system, including any personnel necessary to support the overall registration and insurance filing system. The DOT should continue to collect registration fees collected by the ICC until the conclusion of the rulemaking and the implementation of any new Federal system.

The Committees does not intend that any new Federal system impose any additional burdens or mandates on carriers. The Committee is particularly concerned that any new system not impose any additional insurance filing requirements on private motor carriers.

Furthermore, the Committee is aware of the State's responsibilities to protect their citizens, and the States' needs for adequate funding of safety programs. The Committee intends that the Secretary work closely with the States while developing the unified registration system. The Secretary should consider how the new system can enhance the Federal-State partnership that exits to ensure and improve motor carrier safety.

Chapter 141—Operation of Carriers

Subchapter I—General Requirements

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.

Sec. 14102. Leased motor vehicles

This section transfer 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. The Committee directs that upon transfer, DOT should not continue any dispute resolution functions regarding the ICC leasing rules, but rather only oversee the regulations.

Sec. 14103. Loading and unloading motor vehicles

This section preserves 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. The Committee directs that upon transfer, DOT should not continue any dispute resolution functions regarding these rules, but rather only oversee the regulations.

Sec. 14104. Household goods carrier operations

This section preserves the performance standards for household goods carriers.

The Committee directs that upon transfer, DOT should not continue any dispute resolution functions regarding these rules, but rather only oversee the regulations.

Subchapter II—Reports and Records

Sec. 14121. Definitions

This section continues the existing provision that requirements under this subchapter extend to receivers, trustees, and associations of carriers or brokers.

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 the carrier.

Sec. 14123. Financial reporting

Currently, the ICC has the authority to require, and does require, the filing of annual financial reports from Class I (annual revenues greater than $10 million) and Class II (annual revenues between $3 million and $10 million) carriers. The ICC received financial reports from 1,875 motor carriers in 1994.

The Committee is aware that there is a difference of opinion as to the validity and benefits of financial reporting requirements.

Labor representatives, safety groups, certain insurance interests, and some trucking companies (primarily public less-than-truckload carriers) believe that there is a safety benefit to these reporting requirements and that safety may be reduced in the face of financial difficulties. A 1991 General Accounting Office report concluded that certain financial ratios such as operating ratio and net profit margin, could predict which interstate trucking companies would have safety problems. Some insurers have stated the financial reports are necessary to make determinations of insurability and to identify motor carriers most in need of supervision and assistance from safety engineers.

However, others have stated that the reports cannot or should not be used to determine safety compliance, that needed information for insurance decisionmaking is easily obtained directly from the individual carrier client, and that the requirement is a paperwork burden particularly for smaller carriers. Several individual insurance companies have communicated to the Committee that these financial reports are not necessary for them to make insurance determinations. Another concern about the public release of this data was expressed to the Committee from privately-held carriers which do not file with the Securities and Exchange Commission and, thus, the information is not made publicly available through any other means. These carriers question whether the government and the public should have access to this otherwise private information.

Some Members of the Committee were in favor of eliminating the reporting requirement altogether while others were in favor retaining it. The provision included in new section 14123 is a compromise which directs that the Secretary shall require financial reporting for Class I carriers and may require financial reporting for Class II carriers. Since many companies have raised concerns regarding the administrative burden in collecting and filing the information, the Secretary has discretion in requiring smaller carriers to file.

Recognizing the legitimate concerns of privately-held companies about preserving the confidentiality of certain business information, upon request, the Secretary can exempt privately-held companies from the public release of their reports if it is necessary to avoid competitive harm and the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5. The Committee expects that the Secretary will review requests for exemptions from publication in a fair, reasonable manner. For example, the Secretary should allow an exemption where the filer has demonstrated a history of its treatment of the reports as trade secrets or privileged or confidential information, which history may include filing of such reports under a claim of confidentiality, litigation to prevent their release to the public, or release of such reports by the filer to third parties under confidentiality agreements or understanding. In considering any request, the Secretary may also consider the extent to which the filer has employed innovative technologies or methodologies, the cost or other effectiveness of which may be revealed in whole or in part by the public release of such reports, and such revelation may be considered to constitute competitive harm. Exemptions may also be granted upon a showing that the reports qualified under

section 552(b)(4) of title 5. It is important to note that, even if an exemption is granted, the Secretary will still be in receipt of the information and can review the data for any safety implications. This should address concerns that safety may be diminished since the exemption covers only the public release of the data. The data can also be used in aggregate industry-wide statistics.

Finally, the Secretary is given greater discretion in determining what data is to be reported and in what form. It is intended that the Secretary require only the information necessary to provide safety information or for the purposes under this section, and that the Secretary not impose onerous and excessive requirements. In addition, the Secretary should be aware that most carriers which are required to report are privately-held companies and information in the reports for these carriers would not be made public but for this requirement. Therefore, the Secretary should tailor reporting requirements to minimize disclosure of sensitive information.

Current ICC regulations do not require carriers that carry more than 75% of their freight by contract to file financial reports. The Committee does not intend, through the elimination of the distinction between common and contract carriage, to extend financial reporting to those carriers that are currently exempt through this technical change in definition.

Chapter 143—Finance

Sec. 14301. Security interests in certain motor vehicles

This section preserves current law governing the recordation of security interests in trucks, tractors, and trailers.

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 anitrust and other laws for approved pooling arrangements as current law provides. The Committee does not intend any change from existing pooling law.

Chapter 145—Federal-State Relations

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 makes two changes to the existing provision. First, it clarifies in subsection (b) that transportation brokers are treated the same as freight forwarders for the purposes of State preemption.

Second, it adds a new provision as subsection (c)(2)(C) which provides a new exemption from the preemption of State regulation of intrastate transportation relating to the price of non-consensual tow truck services. This is only intended to permit States or political subdivisions thereof to set maximum prices for non-consensual tows, and is not intended to permit re-regulation of any other aspect of tow truck operations.

The Committee had been asked to go farther and permit States and political subdivisions thereof to re-regulate all aspects of non-consensual tow truck services. The Committee provision struck a balance between the need to protect consumers from exorbitant towing fees and the need for a free market in towing services. Under the current provision, States and political subdivisions thereof would need to take affirmative action to re-regulate the prices of non-consensual tow truck operations.

Sec. 14502. Tax discrimination against motor carrier transportation property

This section preserves current restrictions on State and local authorities regarding the authority to tax property used to provide interstate trucking service.

Sec. 14503. Withholding State and local income tax by certain carriers

This section preserves the restrictions on State and local authorities regarding the authority to tax the earnings of employees of motor carriers and water carriers.

Sec. 14504. Registration of motor carriers by a State

This section transfer the current single-state registration system for evidencing motor carrier insurance coverage to the Secretary until DOT develops a replacement under section 13908.

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 conforms the treatment of taxation of bus tickets to that of airline tickets.

Chapter 147—Enforcement; Investigations; Rights; Remedies

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.

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.

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.

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 Panel under this part. This section also provides that complaints brought to enforce the motor carrier leasing and lumping rules may also seek injunctive relief.

Sec. 14705. Limitation on actions by and against carriers

This section preserves the current relevant statutes of limitation for bringing court suits by or against carriers and makes the time limits uniform for all types of traffic.

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 carriers' liability. 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.

Sec. 14707. Private enforcement of registration requirement

This section preserves the current private enforcement of the registration requirement by persons injured by the unregistered transportation of service.

Sec. 14708. Dispute settlement program for household good 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 as a condition of registration. This arbitration system is intended to afford consumers a forum to resolve loss and damage claims that may arise as part of the transportation of household goods. For claims of $1000 and less, if a shipper requests arbitration, it shall be binding on both parties. For claims in excess of $1000, then both the carrier and the shipper must agree to arbitrate the dispute.

This provision is intended to replace the informal dispute resolution activities of current ICC employees.

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.

Chapter 149—Civil and Criminal Penalties

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.

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.

Sec. 14903. Tariff violations

This section retains current penalties for tariff violations and updates some penalty amounts.

Sec. 14904. Additional rate violations

This section retains penalties for violations regarding rebates by agents and undercharging and updates the penalty amounts.

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.

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.

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.

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.

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.

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 and updates the penalty amounts.

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 updated the penalty amounts.

Sec. 14912. Weight-bumping in household goods transportation

This section preserves the penalties for weight-bumping and updates the penalty amounts.

Sec. 14913. Conclusiveness of rates in certain prosecutions

This section preserves current law regarding the conclusive proof of published or filed rates in certain proceedings and updates the penalty amounts.

Sec. 104. Miscellaneous Motor Carrier Provisions

This section makes several amendments to other motor carrier provisions.

Subsections (a) and (c) permit motor carriers to obtain the amount of financial responsibility required by the Secretary from more than one source, provided the cumulative amount of coverage exceeds the minimum requirement. These changes conform the statute to existing practice.

Subsection (b) provides relief from Federal insurance requirements for interstate transportation to recipients of Federal Transit Administration funding who are located near State borders and who provide transportation in rural areas, including transportation to meet the specialized needs of elderly individuals and individuals with disabilities. Similar relief is already provided for transit operators in urban areas in section 13506(b). The federally-imposed insurance requirements, which are designed for large, commercial interstate carriers, are financially burdensome for these operators. With the relief provided by this section, transit operators in small communities will be better able to provide cross-State transportation to nearby medical or other necessary facilities. The section requires that such transit operators, when they cross a State line, meet the insurance requirements of the higher of any of the States in which they provide transit services.

Subsection (d) alters the existing definition of commercial motor vehicle in section 31132 of title 49. The new definition includes those that transport passengers for compensation, except for vehicles that transport 6 or fewer passengers and provide taxicab services not on a regular route, and those vehicles transporting more than15 passengers. This new definition conforms the Department of Transportation definition with existing ICC jurisdiction.

Subsection (e) permits the Secretary to continue existing practice of the ICC permitting carriers to self-insure.

Subsection (f) directs the Secretary to conform the definition of an automotive transportation vehicle to include any vehicle that is a specialty transporter of race cars or trailers designed for the racing industry.

TITLE II—TRANSPORTATION ADJUDICATION PANEL

Section 201. Title 49 Amendment

This section enacts a new chapter 6 of title 49, United States Code, establishing and authorizing the Transportation Adjudication Panel as a decisionally independent organization within the Department of Transportation. The new sections of chapter 7 are described below.

Section 701. Establishment of panel

This provision establishes the organizational powers of the TAP, including legal representation and budget matters.

Section 702. Functions

This section 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.

Section 703. Administrative provisions

This provision 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.

Section 704. Annual report

This section requires an annual report by the TAP to Congress.

Secton 705. Authorization of appropriations

This section places the TAP on a limited, cyclical reauthorization basis. (The ICC had a permanent authorization.) The bill provides for a 3-year authorization as follows: Fiscal year 1996, $8.421 million;[1] fiscal year 1997, $12.0 million; fiscal year 1998, $12.0 million.

Section 706. Reporting official action

This section retains existing procedures for making a record of official actions by the agency. It replaced former Section 10310.

Subchapter II—Administrative

Section 721. Powers

This section grants the Panel administrative powers to take evidence and testimony, and generally parallels the ICC powers in former section 10321. New subsection (b)(4) explicitly authorizes the Panel to issue unilateral emergency injunctive orders to prevent irreparable harm. This power has been asserted and used by the ICC in the past, although not specifically granted by statute. The Committee intends to confirm the scope of the former ICC power in this regard, and anticipates that the agency's authority to grant emergency injunctive relief will replace where necessary the repealed power in former section 10707 to suspend or otherwise enjoin actions that pose a threat of irreparable harm.

Section 722. Panel action

This provision specifies the effectiveness of Panel decisions, and establishes a rule of finality in subsection (d) for purposes of seeking judicial review of such decisions. The section also confers on the Panel the discretionary power to reopen prior proceedings, paralleling the ICC's analogous authority under former section 10327(g)(1).

Section 723. Service of notice in panel proceedings

This section retains the general requirements of former section 10329 with respect to rail carriers.

---

[1] This equals the FY 1996 DOT appropriation for transferred ICC functions. Funds for the first quarter of FY 1996 were separately appropriated for the ICC through December 31, 1995.

Section 724. Service of process in court proceedings

This provision adopts the rules applicable under former section 10330 with respect to serving court process on rail carriers.

Section 725. Administrative support

This section requires the Secretary of Transportation to provide appropriate administrative support for Panel operations. Although the Panel is authorized to receive a separate appropriation, the Committee intends that the goal of minimizing administrative bureaucracy should be advanced by avoiding all forms of administrative duplication that were inherent in the prior arrangement of the Interstate Commerce Commission as a separate independent agency. For example, once established within DOT, the Panel should not be required to maintain separate payroll, personnel, equal employment opportunity, Freedom of Information Act, and other administrative offices of its own. Instead, for these purposes, the Panel should be treated as part of DOT and provided with all necessary support in these areas by the appropriate DOT offices. This is essential to achieving the goal of minimizing administrative costs and limiting the separate status of the Panel to decisional independence only.

Section 727. Definitions

This section makes a necessary cross-reference to the substantive regulatory provisions of the statute, to make the definitions found there applicable to Panel administrative matters as well.

Section 202. Reorganization

This section provides the Transportation Adjudication Panel with plenary authority to reorganize any former ICC function conferred on the Panel by this legislation, including personnel reorganization matters.

Section 203. Transfer of assets

This section confers on the Panel authority over the personnel and assets of the ICC as of the date of enactment.

Section 204. Saving provisions

Subsection (a) maintains in force all ICC rules, orders, and regulations that conform to current law as amended by this legislation, until modified or rescinded by the Panel.

Subsection (b) establishes a general transition rule regarding administrative proceedings pending at the ICC on the date of enactment. Proceedings governed by provisions repealed in this legislation are to be terminated. Any other proceedings are to be completed under the legal standards in effect prior to enactment.

Subsection (c) establishes a transition rule for matters pending in court on the date of enactment. As a general rule, such pending court cases are to be completed under the law in effect prior to enactment. An exception is made for matters remanded from a court: after such a remand, any subsequent administrative proceedings before the Panel are to be governed by the law as amended by this legislation.

Subsection (d) confirms that all legal authorities conferred under laws transferred to the Panel by this Act or under laws enacted in the Act may continue to be exercised by an officer or employee of the Panel, except as otherwise provided by law.

Section 205. References

Section 205 confirms that, even if not specifically changed in the conforming amendments contained in Title III, all references to the Interstate Commerce Commission in statute, orders, regulations, or other documents are deemed to refer to the Panel or its members or employees, as appropriate.

TITLE III—CONFORMING AMENDMENTS

Title III contains numerous conforming amendments to other laws containing references to the Interstate Commerce Commission.

APPENDIX

Disposition of Existing Provisions

Section	Mode	Part A	Part B	Subject
10101	All	X	13101	National Transp. Policy.
10101a	Rail	10101a		Rail Transp. Policy.
10102	All	10102	13102	Definitions.
10103	All	10103	13103	Remedies as cumulative/exclusive.
10301	All	701		Organization.—General.
New	All	702		Transfer of functions.
New	All	703		Independence of Panel.
10302	All	X		Org—Divisions.
10303	All	X		Org—Secretary.
10304	All	X		Org.—Employee Boards.
10305	All	X		Org.—Delegation of Authy'.
10306	All	X		Org.—Conduct of Proceedings.
10307	All	X		Org.—Office and sessions.
10308	All	703(e)		Org.—Admission to Practice.
10309	All	X		Org.—Cong. Access to records.
10310	All	706		Org—Reporting official action.
10311	All	704		Org.—Annual Report.
New	All	705		3-yr. Authorization of appropriations.
10321	All	721	13301	Powers
10322	Nonrail		X	Nonrail procedures.
10323				[previously repealed]
10324	All	722(a)-(b)		Agency action.
10325				[previously repealed]
10326	Rail	X		Limitations in Rail Rulemakings.
10327	Rail	722(c)–(d)		Rail Procedures.
10328	All	X	13302	Intervention.
10329	All	723	13303	Service of notice.
10330	All	724	13304	Service of process.
10341–10344	All	X		Joint Boards.
10344(f)	All	725		Space of NARUC.
10361–10364	Rail	X		Rail Services Planning Office.
10381–10388	Rail	X		Rail Public Counsel.
New	All	726		Admin. support for Panel.
New	All	727		Definitions same as subtitle IV.
10501	Rail	10301		Rail General Jurisdiction.
10502	Rail	X		Express Carrier Transportation.
10503	Rail	X		Rail-Water Connections.
10504	Rail	X		Exempt rail mass transp.
10505	All	10302	13541	Exemption Auth'y.
10521	Motor		13501	Motor General Jurisdiction
10522	Motor		13502	Exempt Transp.—Alaska.
10523	Motor		13503	Exempt Terminal Areas transp.
10524	Motor		13505	Transp. Furthering Primary Business.
10525	Motor		13504	Transp. Entirely in 1 State.
10526	Motor		13506	Misc. Motor Exemptions.
10527	Motor		X	Written contracts for certain exempt agricultural movements.
10528	Motor		13507	Mixed regulated & unregulated.
10529	Motor		13508	Cooperative Ass'ns.
10530	Motor		13902(c)	Foreign Carrier registrations.
10531	Motor		X	Mass transp. Exemption.
10541	Water		13521	Water General Jurisdiction.
10542	Water		X	Water—Exempt bulk transp.
10543	Water		X	Water—Exempt incidental transp.

Section	Mode	Part A	Part B	Subject
10544	Water		X	Water—Misc. Exemptions.
10561	Frt. F.		13531	Frt. Forwarder—General Jurisd'n.
10701	All	10501 (a), (b)	13701 (a)	Rate Reas. Reqts.
10701(f)	Motor		13708	Undercharge settlements.
10701a	Rail	10501 (c), (d)		Rail Rate Reas. Reqts.
10702	All	10502	X	Carrier Auth'y to set rates.
10703	All	10503	13705	Carrier Auth'y for Through Routes.
10704	All	10504	13701(b)	ICC Auth'y to prescribe rates.
10705	All	10505	13701(b)	ICC Auth'y to set through routes.
10705a	Rail	X		Joint rate surcharges.
10706	All	10506	13703	Collective activities & antitrust exemption.
10707	Rail	X		Suspension of new rail rates.
10707a	Rail	X		Zone of rate flexibility.
10708	Pipe & Motor	X	X	Suspension of new nonrail rates.
10709	Rail	10507		Market Dominance.
10710	All	X	X	Discrim. against recyclables.
10711	Rail	X		Effect of certain sections.
10712	Rail	10508		Inflation-based increases.
10713	Rail	10509		Contract transp.
10721	All	10521	13711	Govt. Transp.
10722	All	X	X	Special passenger rates.
10723	All	X	X	Charitable.
10724	All	10522	X	Emergency rates.
10725	Frt. F.		X	Special frt. forwarder rates.
10726	Rail	X		Long- & short-haul rates transp.
10727				[previously repealed].
10728	Rail	X		Separate rates for distinct services.
10729				[previously repealed].
10730	All	11506(c)(3)	X	Released rates.
10731	Rail	X		Recyclables rates.
10732			13712	Food & grocery transp.
10733	Motor		X	Recyclable rates.
10734	Rail	10523		Car utilization.
10735	Motor		13704	HHG—binding estimates.
10741	All	10541	X	Anti-discrimination.
10742	Rail-Water	10542	X	Facilities for interchange.
10743	All	X	X	Payment of rates.
10744	All	X	13706	Liability for payment of rates.
10745	Rail	10543		Continuous carriage of freight.
10746	Rail	X		Commodities clause.
10747	All	10544	X	Facilities provided by shipper.
10748	Rail	X		Transp. of livestock.
10749	Frt. F.		X	HHG frt. forwarders—exchg. of services.
10750	Rail	10545		Demurrage.
10751	All	X	X	Business entertainment expenses.
10761	All	X	13702(a)	Tariff required.
10762	All	X	13702(b)–(d)	Tariff requirements.
10762(a) (3)–(5)	Motor		13709(a)	Undercharge applicability.
New	Water		13702(e)	Port-to-port rates.
10763	Rail	X		Shipper routing.
10764	Rail	X		Arrangements between carriers.
10765	All	X	X	Water arrangements with other carriers.
10766	Frt. F.		X	Frt. Forwarder traffic agreements.
10767	Motor		13707	Billing and collecting practices.
10781– 10786	Rail	X		Rail property valuation.
New	Motor		13710	Undercharge—Unreas. practice from NRA (now a stat. note to 10701).
10901	Rail	10701, 10702		Construction & operation.
10902	Rail	X		Safe & adequate facilities.

Section	Mode	Part A	Part B	Subject
10903	Rail	X		Abandonment approval required.
10904	Rail	10703		Abandonment procedures.
10905	Rail	10704		Financial assistance.
10906	Rail	10705		Public use of abandoned lines.
10907	Rail	10706, 10301(c)(3), 10102(5).		Spur track exemption.
10908	Rail	X		Passenger route discontinuance—interstate.
10909	Rail	X		Passenger route discontinuance—intrastate.
10910	Rail	X		Feeder line development.
10921	Motor		13901	License requirement.
10922	Motor		13902	Motor carrier license.
10923	Motor		13903	Frt. forwarder license.
10924	Motor		13904	Broker license.
10925	Motor		13905	Duration of license.
10926	Motor		X	Transfers of licenses.
10927	Motor		13906	Security (Insurance) requirement.
10928	Motor		X	Temporary authority.
10929	Water		X	Temporary water authority.
10930	Motor		X	Limitations on licenses.
10931	Motor		X	Intrastate licensing.
10932	Motor		X	Motor savings provision.
10933	Frt. F.		X	Ceasing HHG frt. forwarder service.
10934	Motor		13907	HHG Agents.
10935	Motor		X	Bus route discontinuances.
10936	Motor		X	Limit on intrastate bus regulation.
New	Motor		13908	Replacement unified registration system.
11101	All	10901	14101	Providing transp. (Common carrier oblig'n).
11101(d)	Motor		13709(b)	Undercharge—contract vs. common disputes.
11102	Motor		X	Classification of Carriers.
11103	Rail	10902		Use of terminal facilities.
11104	Rail	10903		Switch connections.
11105	Rail	X		Protective services (heat and cold).
11106	Motor		X	Identification of vehicles.
11107	Motor		14102	Leased vehicles (owner-operators).
11108	Water		X	Water—unreas. discrimination.
11109	Motor		14103	Lumping.
11110	Motor		14104	HHG operations.
11111	Motor		X	CB radios on buses.
11121	Rail	10921		Car service criteria.
11122	Rail	10922		Car service compensation.
11123	Rail	X		Emergency situations.
11124	Rail	10923		Rerouting.
11125	Rail	X		Directed service.
11126	Rail	X		Distribution of coal cars.
11127	Motor		X	HHG Frt. Forwarder services.
11128	All	10924	X	War emergencies
11141	All	10941	14121	Reports and records.
11142	Motor	10942	X	Uniform accounting system.
11143	All	10943	X	Depreciation charges.
11144	All	10944	14122	Records inspection and retention.
11145	All	10945	14123	Reports by carriers.
11161	Rail	X		Railroad Accounting Principles Board (RAPB).
11162	Rail	X		Cost accounting principles.
11163	Rail	10961		Implementing accounting principles, accounting.
11164	Rail	10962		Certification of carrier's accounting.
11165	Rail	10963		Cost info. made available.
11166	Rail	10964		Cost reporting.
11167	Rail	X		RAPB report.

Section	Mode	Part A	Part B	Subject
11168	Rail	X		RAPB funding authorized.
11301	Rail	X		Securities issuances.
11302				[previously repealed].
11303	Rail	11101		Equipment trusts.
11304	Motor		14301	Security interests in motor vehicles.
11321	Rail-Water	X	X	Ownership of water carriers.
11322	Rail	X		Interlocking officers & directors.
11323	All	X	X	Ownership of carriers by HHG frt. forwarders.
11341	All	1121	14302(f)	Scope of authority (antitrust immunity).
11342	All	11122	14302	Pooling.
11343	All	11123, 10702	X	Mergers & consolidations.
11344	All	11124	X	Merger procedures—general.
11345	Rail	11125		Merger procedures—rail.
11345a	Motor		X	Merger procedures—motor.
11346	Rail	X		Expedited merger procedure.
11347	Rail	11126		Labor protection for mergers.
11348	All	X	X	Authority over noncarrier in control.
11349	Motor		X	Temporary auth'y for mergers.
11350	Rail	X		Mergers—DOT sponsorship.
11351	All	11127	X	Mergers—supplemental orders.
11361–11367	Rail	X		Financial Structure.
11501	All	X	14501	State preemptions.
11502	All	X	X	Conferences & jt. hearings w/states.
11503	Rail	11301		Tax discrim.—rail.
11503a	Motor		14502	Tax discrim.—motor.
11504	All	11302	14503	Withholding st. & local income tax.
11505	Rail, Frt. F.	X	X	St. actions to injoin abandonments by rail or HHG frt. forwarders.
11506	Motor		14505	Single-State registration.
11507	All	X	X	Prison-made property.
New	Motor		14505	Bus sales tax.
11701	All	11501	14701	General enforcement authority.
11702	All	11502	14702	ICC enforcement.
11703	All	11503	14703	Atty. Gen. enforcement.
11704	Motor		X	Private actions to enjoin HHG frt. forwarder cessation of service.
11705	All	11504	14704	Rights & remedies of injured persons.
11706	All	11505	14705	Statute of limitations.
11707	All	11506	14706	Liability of common carriers under bills of lading.
11708	Motor		14707	Private enforcement of licensing.
11709	Rail	X		Liability for securities issuances.
11710	Rail	X		Liability for misrouting.
11711	Motor		14708	HHG Arbitration program.
11712	Motor		14709	Tariff reconciliation rules (undercharges).
11901	All	11701	14901	General civil penalties.
11902	All	X	14902	Penalties for rebates.
11902a	Motor		14905	Penalties for lumping.
11903	All	X	14903	Rate, discrim. & tariff violations.
11904	All	X	14904	Additional rate & discrim. violations.
11905	All	X	X	Free transp.
11906	Motor		14906	Evasion of regulation.
11907	Rail	11702		Interference with car supply.
11908	Motor		X	HHG Frt. Forwarder abandonment of service.
11909	All	11703	14907	Record keeping & reporting violations.
11910	All	11704	14908	Unlawful disclosure of info.
11911	Rail	X		Unlawfl securities issuances.
11912	All	X	X	Merger—violations by noncarriers.
11913	All	11705	14909	Disobedience to subpenas.
11913a	Rail	X		Accounting principles violations.

Section	Mode	Part A	Part B	Subject
11914	All	11706	14910	General criminal penalties.
11915	All	11707	14911	Corporate liability.
11916	All	X	14913	Conclusiveness of rates.
11917	Motor		14912	HHG weight-bumping.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee estimates that the enactment of H.R. 2539 will have no significant inflationary impact on prices and costs in the operations of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2539. However, clause 7(d) provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2539 does not contain any new budget authority, new credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight of the subject of H.R. 2539.

3. With respect to the requirement of clause 2(l)(3)(C) of rules XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2539 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 6, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2539, the ICC Termination Act of 1995.

Enacting H.R. 2539 would affect both direct spending and receipts, therefore, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2539.
2. Bill title: ICC Termination Act of 1995.
3. Bill status: As ordered reported by the House Committee on Transportation and Infrastructure on November 1, 1995.
4. Bill purpose: The bill would terminate the Interstate Commerce Commission (ICC) by:

eliminating various functions of the Commission;

transferring the remaining functions to a newly created Transportation Adjudication Panel (TAP) of the Department of Transportation (DOT) and to the Federal Highway Administration (FHWA);

authorizing the TAP and FHWA to collect recording and registration fees to offset some costs of the two agencies;

authorizing an appropriation of $8.4 million for fiscal year 1996 and $12 million for each of fiscal years 1997 and 1998 for the TAP; and

updating railroad and motor carrier regulations to reflect the termination of the ICC and other revisions.

5. Estimated cost to the Federal Government: The bill would authorize the appropriation of about $32 million for the TAP over the next three fiscal years. In addition this bill would change the amount of civil and criminal and civil penalties collected by the federal government and spending from the Crime Victims Fund; however, CBO expects any change would be insignificant.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	200
Additional Revenues and Direct Spending						
Revenues, estimated	.....	(1)	(1)	(1)	(1)	(1)
Direct spending:						
Estimated budget authority	.....	.....	(1)	(1)	(1)	(1)
Estimated outlays	.....	.....	(1)	(1)	(1)	(1)
Spending Subject to Appropriations						
Spending Under Current Law:						
Budget authority[2]	33	22	.....	.....	.....	.....
Outlays	38	23	2	.....	.....	.....

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	200
Proposed changes:						
Authorization level	.....	.....	12	12	.....	.....
Estimated Outlays	.....	.....	11	12	1	.....
Spending under H.R. 2539:						
Authorization level	33	22	12	12	.....	.....
Estimated outlays	38	23	13	12	1	.....

[1] Less than $50,000

[2] The 1996 appropriations bill for transportation, which was recently cleared by the Congress, provides $8.4 million for the TAP—amounts equal to the authorization levels in H.R. 2539. In addition, the appropriations bill provides $13.4 million to shut down the ICC.

The costs of this bill fall within budget function 400.

In addition to the amounts shown in the table, H.R. 2539 could affect offsetting collections and spending from such collections. Because the CBO expects fees collections and spending from the fees to be equal, the fees should have no net impact on the budget.

The bill would allow FHWA and the TAP to establish fees to replace fees currently collected by the ICC. FHWA would assess fees for registration of motor carriers and for filing evidence of financial responsibility. Under H.R. 2539, spending of those fees would not be subject to appropriations; spending of the current ICC fees is subject to appropriations.

TAP would assess fees on railroads for the cost of recording evidence of mortgages, leases, and sales for railroad equipment. Spending of TAP fees would be subject to appropriations.

6. Basis of estimate:

Revenues and direct spending. If H.R. 2539 is enacted into law, the amount of civil and criminal penalties collected by the federal government would change. The bill would deregulate some of the activities for which the federal government currently collects civil penalties but also would increase the fines for the remaining activities. The ICC currently collects about $500,000 annually in both civil and criminal penalties, and we estimate that the net change in such penalties would be significantly less than $500,000 a year.

Criminal penalties are deposited in the Crime Victims Fund and are spent the following year. Because the collection of criminal penalties would change, spending from the Crime Victims Fund would change. Because the change in penalties is expected to be very small, any change in spending also would be insignificant.

Spending subject to appropriations. This estimate assumes that the full amounts authorized to be appropriated for the TAP would be appropriated for each fiscal year. (As shown in the table, the amounts authorized for 1996 have been included in the transportation appropriations bill recently cleared by the Congress.) The outlay estimates are based on the historical spending rate for the ICC. The bill does not specifically authorize funds to shut down the ICC, however, CBO estimates that at least $13 million (the amount provided in the 1996 transportation appropriations bill) would be required to shut down the agency and provide severance pay, assuming that about 100 people would be transferred to the TAP and 60 people to FHWA.

The ICC and DOT have not determined how many people would be transferred if this bill is enacted into law. According to federal regulations, if a function is transferred from one agency to another, the people performing that function are automatically transferred.

If significantly fewer than 160 people are transferred from the ICC to the DOT, the ICC might need more than $13 million to shut down the agency. If significantly more than 160 people are transferred, the TAP and FHWA might need more funding than authorized in H.R. 2639 to handle the additional personnel.

Fees. The bill does not authorize any additional funds to be appropriated to FHWA for the functions and personnel transferred to the agency. Such funding would come from the new fees that the bill would establish to replace fees currently collected by the ICC. The ICC collects about $8 million of fees annually for both rail and motor carrier activities, but the collection would drop if this bill is enacted because some of the functions that generate fees would be eliminated. Of that total, fees assessed to railroads by the TAP would total less than $1 million a year.

FHWA would need to collect at least $5 million a year from motor carrier activities to pay the 60 people that would likely be transferred and to carry out its new functions. The bill would also require the FHWA to develop a new registration system for motor carriers within two years in order to streamline the current system. FHWA has doubts about its ability to collect sufficient funds to cover these costs under the ICC's fee structure. If the fees are not increased, additional funds would have to be appropriated or the FHWA would have to cut back in other areas.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting H.R. 2539 would change the amount of civil and criminal penalties collected by the federal government and spending from the Crime Victims Fund. Therefore, pay-as-you-go procedures would apply to the bill; however, the changes in both receipts and outlays would be less than $500,000 a year.

[by fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	0	0	0

8. Estimated cost to state and local governments: H.R. 2539 contains a number of provisions that would affect state and local governments. Two provisions would likely result in costs to such governments, primarily in the form of lost revenues. The bill also has elements that would ease the requirements and regulatory burdens on state and local transportation agencies. Given the uncertainty over the impact of the bill's deregulatory measures at the state and local level, CBO is not able to provide an estimate of the bill's net impacts at this time. Provisions with the most direct effect on state and local governments are discussed below.

Potential costs. H.R. 2539 would preempt a state's ability to collect taxes or fees on interstate bus travel. The state of Oklahoma is currently the only state with such a tax in place. The Oklahoma Tax Commission estimates that the tax generates approximately $400,000 a year in revenue for the state. The state of Utah recently approved a tax on interstate bus service that is scheduled to go

into effect January 1, 1996. Utah was not able to provide an estimate of the revenue it expects to raise from the tax.

The bill would require the Secretary, in cooperation with the states, to replace the current motor carrier identification, registration, and information systems with a single on-line system. This consolidation could lead to the repeal of the existing Single State Registration System (SSRS), which requires motor carriers to register annually with one state and provide proof of insurance. States are allowed to assess a fee for this service. According to the National Conference of State Transportation Specialists, states collect a total of approximately $89 million a year in such fees. If the Secretary prohibits the state insurance registration system in favor of a program administered at the federal level, the states would no longer be able to collect the SSRS fees. The states would, however, realize savings from not having to administer or enforce the program. None of the states we contacted, nor any of the national interest groups representing state interests, were able to provide an estimate of these costs. Many states also apply the SSRS revenues toward their matching requirements for federal Motor Carrier Safety Assistance Program (MCSAP) funds. To the extent that states use the fee revenue in this way, elimination of the single state registration program and the ability to charge these fees would require that some states find other sources of matching funds or face losing MCSAP monies.

Potential savings. H.R. 2539 contains at least two provisions that would directly benefit state governments. The bill would exempt interstate mass transportation services funded with federal grants for rural, elderly, or disabled populations from federal minimum financial responsibility requirements as long as they meet state standards. This provision should make running these services easier and cheaper for state and local governments. The bill would also grant public rail authorities the right to reasonable use of terminal facilities, switch connections, and tracks of other rail carriers subject to the Transportation Adjudication Panel's jurisdiction. Although the public rail authorities would be required to provide compensation for such services, the provision could save the authorities from having to construct and maintain their own infrastructure to serve the same purposes.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal cost estimate, John Patterson and Stephanie Weiner; State and local government cost estimate, Karen McVey.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

On the motion to order H.R. 2539 to be reported, as amended, the vote was 36–22.

AYES—36	NAYS—22
Bachus	Barcia
Baker	Borski
Bateman	Brown
Blute	Clement
Boehlert	Clyburn

Brewster
Clinger
Coble
Duncan
Ehlers
Emerson
Ewing
Fowler
Franks
Gilchrest
Hayes
Horn
Hutchinson
Kelly
Kim
LaHood
Latham
LaTourette
Martini
Mica
Molinari
Parker
Petri
Quinn
Rahall
Seastrand
Tate
Wamp
Weller
Zeliff
Shuster
Collins
Costello
Cramer
Danner
DeFazio
Filner
Johnson
Lipinski
McCarthy
Mascara
Menendez
Nadler
Norton
Oberstar
Poshard
Traficant
Wise

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

TITLE 49—TRANSPORTATION

SUBTITLE	Sec.
I. DEPARTMENT OF TRANSPORTATION	101
* * * * * * *	
IV. INTERSTATE [COMMERCE] *TRANSPORTATION*	10101
* * * * * * *	

SUBTITLE I—DEPARTMENT OF TRANSPORTATION

CHAPTER	Sec.
1. ORGANIZATION	101
* * * * * * *	
7. TRANSPORTATION ADJUDICATION PANEL	*701*
* * * * * * *	

CHAPTER 7—TRANSPORTATION ADJUDICATION PANEL

SUBCHAPTER I—ESTABLISHMENT

Sec.
701. Establishment of Panel.
702. Functions.
703. Administrative provisions.
704. Annual report.
705. Authorization of appropriations.
706. Reporting official action.

SUBCHAPTER II—ADMINISTRATIVE

721. Powers.
722. Panel action.
723. Service of notice in Panel proceedings.
724. Service of process in court proceedings.
725. National organization of State commissions.
726. Administrative support.
727. Definitions.

SUBCHAPTER I—ESTABLISHMENT

§ 701. Establishment of Panel

(a) ESTABLISHMENT.—There is hereby established within the Department of Transportation the Transportation Adjudication Panel.

(b) MEMBERSHIP.—(1) The Panel 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 Panel 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 in the private sector.

(3) The term of each member of the Panel 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 then serving unexpired terms shall become members of the Panel, 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.

(5) No individual may serve as a member of the Panel for more than 2 terms. In the case of an individual who becomes a member

of the Panel 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 Panel 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 Panel does not impair the right of the remaining members to exercise all of the powers of the Panel. The Panel may designate a member to act as Director during any period in which there is no Director designated by the President.

(c) DIRECTOR.—(1) There shall be at the head of the Panel a Director, who shall be designated by the President from among the members of the Panel. The Director 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 Panel the Director shall be responsible for administering the Panel. The Director may delegate the powers granted under this paragraph to an officer, employee, or office of the Panel. The Director 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 Panel, including attorneys to provide legal aid and service to the Panel and its members, and to represent the Panel in any case in court;

(B) appoint the heads of offices with the approval of the Panel;

(C) distribute Panel responsibilities among officers and employees and offices of the Panel;

(D) prepare requests for appropriations for the Panel and submit those requests to the President and Congress with the prior approval of the Panel; and

(E) supervise the expenditure of funds allocated by the Panel for major programs and purposes.

§ 702. Functions

Except as otherwise provided in the ICC Termination Act of 1995, or the amendments made thereby, the Panel 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 Panel in the same manner as it does to an independent regulatory agency.

(b) OPEN MEETINGS.—For purposes of section 552b of title 5, United States Code, the Panel shall be deemed to be an agency.

(c) INDEPENDENCE.—In the performance of their functions, the members, employees, and other personnel of the Panel 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 Director of the Panel may appear for, and represent the Panel in, any civil action brought in connection with any function carried out by the Panel 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 Panel 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 Panel and include a statement by the Panel—

(1) showing the amount requested by the Panel in its budgetary presentation to the Secretary and the Office of Management and Budget; and

(2) an assessment of the budgetary needs of the Panel.

(g) DIRECT TRANSMITTAL TO CONGRESS.—The Panel 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 Panel with Congress, or a committee or member of Congress, about the information.

§ 704. Annual report

The Panel shall annually transmit to the Congress a report on its activities.

§ 705. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Transportation for the activities of the Panel—

(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) The Panel 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 Panel and, if damages are awarded, the findings of fact supporting the award. The Panel may have its reports published for public use. A published report of the Panel is competent evidence of its contents.

(b)(1) When action of the Panel in a matter related to a rail carrier is taken by the Panel, an individual member of the Panel, or another individual or group of individuals designated to take official action for the Panel, 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) of this subsection 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) The Panel shall carry out this chapter and subtitle IV. Enumeration of a power of the Panel in this chapter or subtitle IV does not exclude another power the Panel may have in carrying out this chapter or subtitle IV. The Panel may prescribe regulations in carrying out this chapter and subtitle IV.

(b) The Panel may—

(1) inquire into and report on the management of the business of carriers providing, and brokers for, 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 or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker;

(3) obtain from those carriers, brokers, and persons information the Panel 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)(1) The Panel may subpoena witnesses and records related to a proceeding of the Panel from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Panel, or a party to a proceeding before the Panel, 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)(1) In a proceeding, the Panel 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 Panel 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) of this subsection, the Panel 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 Panel or agreed on by the parties by written stipulation filed with the Panel. A deposition shall be filed with the Panel promptly.

(e) Each witness summoned before the Panel 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. Panel action

(a) Unless otherwise provided in subtitle IV, the Panel may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect.

(b) An action of the Panel remains in effect under its own terms or until superseded. The Panel may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Panel. A court of competent jurisdiction may suspend or set aside any such action.

(c) The Panel 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 Panel; or

(3) change an action of the Panel.

An interested party may petition to reopen and reconsider an action of the Panel under this subsection under regulations of the Panel.

(d) Notwithstanding subtitle IV, an action of the Panel 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 Panel proceedings

(a) A carrier providing transportation subject to the jurisdiction of the Panel 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 Panel may be made.

(b) A designation under subsection (a) of this section shall be in writing and filed with the Panel.

(c) Except as otherwise provided, notices of the Panel 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 Panel 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 Panel.

(d) 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 Panel on an attorney in fact for the carrier constitutes service of notice on the carrier.

§ 724. Service of process in court proceedings

(a) A carrier providing transportation subject to the jurisdiction of the Panel 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 Panel.

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

§ 725. National organization of State commissions

The Administrator of General Services shall assign space and facilities for the use of the national organization of the State commissions and their representatives. The space and facilities shall be available for the use of the State commissions and their representatives cooperating with the Panel or with another department, agency, or instrumentality of the United States Government. The rental for such space shall be paid by the national organization's Federal agency members other than the Panel.

§ 726. Administrative support

The Secretary of Transportation shall provide appropriate administrative support for the Panel.

§ 727. Definitions

All terms used in this chapter that are defined in subtitle IV shall have the meaning given those terms in that subtitle.

* * * * * * *

[SUBTITLE IV—INTERSTATE COMMERCE

[Chapter		[Sec.
[101.	General Provisions	10101
[103.	Interstate Commerce Commission	10301
[105.	Jurisdiction	10501
[107.	Rates, Tariffs, and Valuations	10701
[109.	Licensing	10901
[111.	Operations of Carriers	11101
[113.	Finance	11301
[115.	Federal-State Relations	11501

[117. Enforcement: Investigations, Rights, and Remedies 11701
[119. Civil and Criminal Penalties 11901

[CHAPTER 101—GENERAL PROVISIONS

[Sec.
[10101. Transportation policy.
[10101a. Rail transportation policy.
[10102. Definitions.
[10103. Remedies as cumulative.

[§ 10101. Transportation policy

[(a) Except where policy has an impact on rail carriers, in which case the principles of section 10101a of this title shall govern, 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 provide for the impartial regulation of the modes of transportation subject to this subtitle, and—

[(1) in regulating 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 regulating 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 Federal regulatory efficiency in the motor carrier transportation system and to require fair and expeditious regulatory decisions when regulation is 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 on the motor carrier system; and (K) promote intermodal transportation; and

[(3) in regulating 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 subtitle; (B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this subtitle; and (C) to ensure that Federal reform initiatives enacted by the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions.

[(b) This subtitle shall be administered and enforced to carry out the policy of this section.

[§ 10101a. 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 Interstate Commerce Commission;

[(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 cooperate with the States on transportation matters to assure that intrastate regulatory jurisdiction is exercised in accordance with the standards established in this subtitle;

[(10) to encourage honest and efficient management of railroads and, in particular, the elimination of noncompensatory rates for rail transportation;

[(11) 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;

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

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

[(14) 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; and

[(15) to encourage and promote energy conservation.

[§ 10102. Definitions

[In this subtitle—

[(1) "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.

[(2) "carrier" means a common carrier and a contract carrier.

[(3) "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.

[(4) "common carrier" means an express carrier, a pipeline carrier, a rail carrier, a sleeping car carrier, a motor common carrier, a water common carrier, and a household goods freight forwarder.

[(5) "commuter bus operations" means short-haul regularly scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and utilized primarily by passengers using reduced-fare, multiple-ride, or commutation tickets during morning and evening peak period operations.

[(6) "contract carrier" means a motor contract carrier and water contract carrier.

[(7) "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.

[(8) "express carrier" means a person providing express transportation for compensation.

[(9) "freight forwarder" means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, 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 the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title.

[Such term does not include a person using transportation of an air carrier subject to part A of subtitle VII of this title.

[(10) "highway" means a road, highway, street, and way in a State.

[(11) "household goods" means—

[(A) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the Commission may provide by regulation; except that this subparagraph shall not be construed to include property moving from a factory or store, except such property as the householder has purchased with intent to use in his dwelling and which is transported at the request of, and the transportation charges paid to the carrier by, the householder;

[(B) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments and such other similar property as the Commission may provide by regulation; except that this subparagraph shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment, or a portion thereof, from one location to another; and

[(C) articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving households goods and such other similar articles as the Commission may provide by regulation; except that this subparagraph shall not be construed to include any article, whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.

[(12) "household goods freight forwarder" means a freight forwarder of one of more of the following items: household goods, unaccompanied baggage, or used automobiles.

[(13) "individually determined rate, classification, rule, or practice" means a rate, classification, rule, or practice established by—

[(A) a single motor common carrier for application to transportation that it can provide over its line; or

[(B) 2 or more interlining carriers without participation in an organization established or continued under an agreement approved under section 10706(b) for application to transportation that the interlining carriers can provide jointly over their lines.

[(14) "motor carrier" means a motor common carrier and a motor contract carrier.

[(15) "motor common carrier" means a person holding itself out to the general public to provide motor vehicle transpor-

tation for compensation over regular or irregular routes, or both.

[(16) "motor contract carrier" means—

[(A) a person, other than a motor common carrier, providing motor vehicle transportation of passengers for compensation under continuing agreements with a person or a limited number of persons—

[(i) by assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

[(ii) designed to meet the distinct needs of each such person; and

[(B) a person providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons—

[(i) by assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

[(ii) designed to meet the distinct needs of each such person.

[(17) "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 10521(a)(1) and (2) 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.

[(18) "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 Commission, 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.

[(19) "non-contiguous domestic trade" means motor-water transportation subject to the jurisdiction of the Commission under chapter 105 of this title involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

[(20) "person", in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

[(21) "pipeline carrier" means a person providing pipeline transportation for compensation.

[(22) "rail carrier" means a person providing railroad transportation for compensation.

[(23) "railroad" includes—

[(A) a bridge, car float, lighter, and ferry 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.

[(24) "rate" means a rate, fare, or charge for transportation.

[(25) "sleeping car carrier" means a person providing sleeping car transportation for compensation.

[(26) "State" means a State of the United States and the District of Columbia.

[(27) "tariff", when used in reference to a contract carrier, means a schedule.

[(28) "transportation" includes—

[(A) a locomotive, car, vehicle, 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 receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.

[(29) "United States" means the States of the United States and the District of Columbia.

[(30) "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.

[(31) "water carrier" means a water common carrier and a water contract carrier.

[(32) "water common carrier" means a person holding itself out to the general public to provide water transportation for compensation.

[(33) "water contract carrier" means a person, other than a water common carrier, providing water transportation for compensation under an agreement with another person, including transportation on a vessel provided to a person other than a carrier subject to the jurisdiction of the Commission under this subtitle when the vessel is used to transport only the property of the other person.

[§ 10103. Remedies as cumulative

[Except as otherwise provided in this subtitle, the remedies provided under this subtitle are in addition to remedies existing under another law or at common law.

[CHAPTER 103—INTERSTATE COMMERCE COMMISSION

[SUBCHAPTER I—ORGANIZATION

[Sec.

[10301. General.
[10302. Divisions of the Commission.
[10303. Secretary of the Commission; public records.
[10304. Employee boards.
[10305. Delegation of authority.
[10306. Conduct of proceedings.
[10307. Office and sessions.
[10308. Admission to practice.
[10309. Access to records by congressional committees.

[10310. Reporting official action.
[10311. Annual report.

[SUBCHAPTER II—ADMINISTRATIVE

[10321. Powers.
[10322. Commission action and appellate procedure in non-rail proceedings.
[10324. Commission action.
[10326. Limitations in rulemaking proceedings related to rail carriers.
[10327. Commission action and appellate procedure in rail carrier proceedings.
[10328. Intervention.
[10329. Service of notice in Commission proceedings.
[10330. Service of process in court proceedings.

[SUBCHAPTER III—JOINT BOARDS

[10341. Jurisdiction.
[10342. Establishment.
[10343. Powers.
[10344. Administration.

[SUBCHAPTER IV—RAIL SERVICES PLANNING OFFICE

[10361. Organization.
[10362. Duties.
[10363. Director.
[10364. Powers.

[SUBCHAPTER V—OFFICE OF RAIL PUBLIC COUNSEL

[10381. Organization.
[10382. Duties; standing.
[10383. Director.
[10384. Office staff.
[10385. Powers.
[10386. Reports.
[10387. Budget requests and estimates.
[10388. Authorizations of appropriations.

[SUBCHAPTER I—ORGANIZATION

[§ 10301. General

[(a) The Interstate Commerce Commission is an independent establishment of the United States Government.

[(b) The Commission is composed of 5 members appointed by the President, by and with the advice and consent of the Senate. The President shall designate one of the members as Chairman. Not more than 3 members may be appointed from the same political party.

[(c) The term of each member of the Commission is 5 years and begins 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, is 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. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

[(d) A member of the Commission 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.

[(e) A vacancy in the membership of the Commission does not impair the right of the remaining members to exercise all of the powers of the Commission. The Commission may designate a mem-

ber to act as Chairman during any period in which there is no Chairman designated by the President.

[(f) Subject to the general policies, decisions, findings, and determinations of the Commission, the Chairman is responsible for administering the Commission. The Chairman may delegate the powers granted under this subsection to an officer, employee, or administrative unit of the Commission. The Chairman shall—

[(1) appoint and supervise, other than regular and full time employees in the immediate offices of another member, the officers and employees of the Commission, including attorneys to provide legal aid and service to the Commission and its members, to represent the public interest in investigations and proceedings of the Commission, and to represent the Commission in any case in court;

[(2) appoint the heads of major administrative units with the approval of the Commission;

[(3) distribute Commission business among officers and employees and administrative units of the Commission;

[(4) prepare requests for appropriations for the Commission and submit those requests to the President and Congress with the prior approval of the Commission; and

[(5) supervise the expenditure of funds allocated by the Commission for major programs and purposes.

[(g) The Commission shall have a seal that shall be judicially recognized.

[(h) The expenses of the Commission shall be paid after presentation and approval by the Chairman of itemized vouchers.

[§ 10302. Divisions of the Commission

[(a) The Interstate Commerce Commission may establish and assign Commissioners to serve on as many divisions as may be necessary and may designate any division as an appellate division. Each division shall be composed of at least 3 Commissioners. The Commission may assign a Commissioner to serve on more than one division.

[(b) Unless otherwise directed by the Commission—

[(1) the Commissioner senior in service of the Commissioners on a division is chairman of the division; and

[(2) the Chairman of the Commission, or another Commissioner designated by the Chairman, may serve on a division temporarily, when there is a vacancy in the membership of the division or when another Commissioner is absent or unable to serve.

[(c) The Commission shall designate each division numerically or by a term descriptive of the function of that division.

[§ 10303. Secretary of the Commission; public records

[(a) The Chairman of the Interstate Commerce Commission, with its approval, shall appoint the Secretary of the Commission.

[(b) The Secretary is the custodian of public records filed with the Commission. Copies of classifications, tariffs, and all arrangements filed with the Commission under this subtitle, and the statistics, tables, and figures contained in reports made to the Commission under this subtitle, are public records. A public record, or

a copy or extract of it, certified by the Secretary under the seal of the Commission is competent evidence in a proceeding of the Commission and in a judicial proceeding.

[§ 10304. Employee boards

[The Interstate Commerce Commission may establish employee boards composed of at least 3 employees. An employee who is a director or assistant director of a bureau, a chief of a section, an employee designated by the Commission, or an attorney may serve on a board.

[§ 10305. Delegation of authority

[(a) The Interstate Commerce Commission may delegate to a division, an individual Commissioner, an employee board, or an employee appointed under section 3105 of title 5, a matter before the Commission for action, including a matter referred to it by either House of Congress or by Congress. However, the Commission may not delegate a matter required to be referred to a joint board under section 10341 of this title, or a function vested in the Commission under this chapter. The Commission may change or rescind a delegation under this subsection at any time. When a Commissioner or employee cannot act on a matter delegated under this section because of absence or another reason, the Chairman of the Commission may designate another Commissioner or employee, as the case may be, to serve temporarily until the Commission otherwise orders.

[(b) Delegation to a division of a matter related to the validity of rates shall be made according to the character of regulation exercised. The delegation of any such matter may not be made according to the kind or class of carrier involved or to the form or mode of transportation in which that carrier may be engaged.

[(c) A division, individual Commissioner, employee board, or an employee may act on a matter delegated under subsection (a) of this section. When acting under this section, a division, individual Commissioner, board, or an employee has the same power and authority and is subject to the same duties and obligations as the Commission. Action taken under this section has the same force and is taken in the same manner as if taken by the Commission.

[§ 10306. Conduct of proceedings

[(a) A majority of the Interstate Commerce Commission, a division, or an employee board is a quorum for the transaction of business. A Commissioner, the Secretary of the Commission, a member of an employee board, or an employee delegated to act under section 10305 of this title may administer oaths.

[(b) A party may appear and be heard before the Commission, a division, an individual Commissioner, a board, or an employee delegated to act under section 10305 of this title in person or by an individual admitted to practice under section 10308 of this title. A hearing before the Commission, a division, an individual Commissioner, a board, or an employee shall be made public on the request of an interested party.

[(c) The Commission shall conform its forms for giving notice and their manner of service, to the extent practical, to those used by the courts of the United States.

[(d) Votes and other official acts of the Commission, a division, an individual Commissioner, an employee board, or an employee delegated to act under section 10305 of this title shall be recorded and shall be made public on the request of an interested party.

[(e) A member of a board and an employee delegated to act under section 10305 of this title may not have a pecuniary interest in, hold an official relation to, or own securities of a carrier providing transportation by any mode.

[(f) The Commission shall review at least once every 3 years and revise as necessary the rules of practice for matters related to rail carriers adopted under section 305(c) of the Railroad Revitalization and Regulatory Reform Act of 1976 (90 Stat. 53).

[§ 10307. Office and sessions

[(a) The principal office of the Interstate Commerce Commission is in the District of Columbia. Until otherwise provided by law, the Commission may obtain suitable offices for its use and may procure all necessary office supplies.

[(b) General sessions of the Commission are held at its principal office. However, the Commission may hold special sessions in any part of the United States, for the convenience of the public or the parties and to avoid delay and expense. The Commission, an individual Commissioner, an employee board, or an employee delegated to act under section 10305 of this title may conduct proceedings under this subtitle in any part of the United States for the convenience of the parties.

[§ 10308. Admission to practice

[Subject to section 500 of title 5, the Interstate Commerce Commission may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

[§ 10309. Access to records by congressional committees

[(a) When the Committee on Energy and Commerce of the House of Representatives or the Committee on Commerce, Science, and Transportation of the Senate makes a written request for a record in the possession or under the control of the Interstate Commerce Commission related to a matter involving a rail carrier providing transportation subject to this subtitle, the Commission shall send that record or a copy to the committee by the 10th day after the date of receipt of the request. If the record is not sent, the Commission shall send a written report to that committee within the 10-day period stating the reason why the record has not been sent and the anticipated date on which it will be sent. If the Commission transfers a record in its possession or under its control to another department, agency, or instrumentality of the United States Government, or to a person, it must condition the transfer on the guaranteed return of the record by the transferee to the Commission so that the Commission can comply with this subsection.

[(b) Subsection (a) of this section does not apply to a record obtained by the Commission from a person subject to regulation by

it if the record contains trade secrets or commercial or financial information of a privileged or confidential nature. Subsection (a) of this section does not limit other authority of Congress, either House of Congress, or a committee or subcommittee of either House, to obtain a record.

[§ 10310. Reporting official action

[(a) The Interstate Commerce Commission 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 Commission and, if damages are awarded, the findings of fact supporting the award. The Commission may have its reports published for public use. A published report of the Commission is competent evidence of its contents.

[(b)(1) When action of the Commission in a matter related to a rail carrier is taken by the Commission, a division, a group of Commissioners, an individual Commissioner, an employee board, an employee delegated to act under section 10305 of this title, or another individual or group of individuals designated to take official action for the Commission, 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) of this subsection 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.

[§ 10311. Annual report

[The Interstate Commerce Commission shall prepare and send to Congress an annual report before April 3 of each year. The Commission shall include in the annual report information that may be of value in answering questions related to regulation of transportation and the names and pay of individuals employed by the Commission. The Commission may include in its annual report, or send to Congress at any time, recommendations for additional legislation related to regulation of transportation.

[SUBCHAPTER II—ADMINISTRATIVE

[§ 10321. Powers

[(a) The Interstate Commerce Commission shall carry out this subtitle. Enumeration of a power of the Commission in this subtitle does not exclude another power the Commission may have in carry-

ing out this subtitle. The Commission may prescribe regulations in carrying out this subtitle.

[(b) The Commission may—

[(1) inquire into and report on the management of the business of carriers providing, and brokers for, transportation and services subject to this subtitle;

[(2) inquire into and report on the management of the business of a person 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;

[(3) obtain from those carriers, brokers, and persons information the Commission decides is necessary to carry out this subtitle; and

[(4) consistent with the transportation policy of section 10101 of this title, provide administrative assistance to small motor common carriers of passengers and local governments in preparing for proceedings under sections 10922(c)(2), 10935, and 11501(e) of this title.

[(c)(1) The Commission, an individual Commissioner, an employee board, and an employee delegated to act under section 10305 of this title may subpena witnesses and records related to a proceeding of the Commission from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpena, the Commission, or a party to a proceeding before the Commission, may petition a court of the United States to enforce that subpena.

[(2) Subpenas may be signed by a Commissioner, the Secretary of the Commission, or a member of a board when the subpena relates to a matter delegated to the board under section 10305 of this title.

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

[(d)(1) In a proceeding, the Commission 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 Commission 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) of this subsection, the Commission may subpena 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 Commission or agreed on by the parties by written stipulation filed with the Commission. A deposition shall be filed with the Commission promptly.

[(e) Each witness summoned before the Commission 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.

[§ 10322. Commission action and appellate procedure in nonrail proceedings

[(a) This section applies to a matter before the Interstate Commerce Commission over which the Commission has jurisdiction under chapter 105 of this title, other than a matter involving a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of such chapter, or section 10934 or 11501(e). The deadlines set forth in this section do not apply to the following sections of this title: 10525(c), 10530, 10708(b), 10708(f), 10922(i)(2), 10922(i)(4), 10928, 10934(c), 10935, 11345a, and 11701(c). In addition, the deadlines set forth in this section do not apply to any application filed under section 10922(c)(2)(A) of this title for authority to provide regular-route transportation entirely in one State as a motor common carrier of passengers.

[(b)(1) Except as provided in paragraph (2) of this subsection, a division, individual commissioner, employee board, or an employee delegated under section 10305 of this title is to make an initial decision in a matter related to a carrier (other than a rail carrier), or, in the case of a matter referred to a joint board under section 10341 of this title, such joint board—

[(A) shall, in any case in which an oral hearing is held or the Commission has found that an issue of general transportation importance is involved, complete all evidentiary proceedings related to the matter not later than the 180th day following institution of the proceeding and shall issue in writing the initial decision not later than the 270th day following institution of the proceeding; and

[(B) shall, in the case of all other proceedings subject to this section, issue in writing the initial decision by the 180th day following institution of the proceeding.

If evidence is submitted in writing or testimony is taken at an oral hearing, the initial decision shall include specific findings of fact, specific and separate conclusions of law, an order, and justification for the findings of fact, conclusions of law, and order.

[(2) In any case involving an application for authority to provide motor carrier transportation incidental to trailer-on-flatcar or container-on-flatcar service by rail under subchapter II of chapter 109 of this subtitle, a final decision on such application shall be issued

in writing not later than the 180th day following the date such application is filed with the Commission.

[(3) At the earliest practicable time after the filing of an application for authority under subchapter II of chapter 109 of this title, the Commission shall publish notice of the filing of such application.

[(c) The Commission, or a division designated by the Commission may waive the requirement for an initial decision under subsection (b) of this section and may require the matter to be considered by the Commission or such division on finding that the matter involves a question of Commission policy, a new or novel issue of law, or an issue of general transportation importance or that waiver of the initial decision is required for the timely execution of the Commission's functions. If the requirement for an initial decision is waived, a final decision shall be issued in writing within the time limit established for the issuance of the initial decision under subsection (b) of this section.

[(d) In a proceeding under this section in which the parties have had at least an opportunity to submit evidence in written form, such parties shall have an opportunity to present arguments to the initial decisionmaker. The decisionmaker shall determine whether the arguments should be presented orally or in writing and may require that written arguments be submitted simultaneously with written submissions of evidence and that oral arguments be presented at an oral hearing. Upon issuance of an initial decision under this section, copies of such decision shall be served on the parties and submitted to the Commission.

[(e) An initial decision under this section becomes a final decision on the 20th day after it is served on the interested parties, unless—

[(1) an interested party files an appeal during the 20-day period or, if authorized by the Commission or division designated by the Commission, by the end of an additional period of not more than 20 days; or

[(2) the Commission stays or postpones under subsection (f)(1) of this section the initial decision not later than the 20th day following the date it is served on the parties.

[(f)(1) Before an initial decision under this section becomes a final decision, the Commission or a division or an employee board designated by the Commission, may review the initial decision on its own initiative and shall review an initial decision if a timely appeal is filed under subsection (e) of this section.

[(2) An initial decision may be reviewed on the record on which it is based or by a further hearing. If an initial decision is reviewed, it shall be stayed pending final determination of the matter and it becomes a final decision only after the final determination is made. If a timely appeal is filed under subsection (e) of this section, the final determination shall be made not later than the 50th day after the appeal is filed. If an initial decision under this section is reviewed by the Commission or a division or an employee board designated by the Commission on its own initiative, the final decision shall be made not later than the 50th day after initiation of such review.

[(3) Notwithstanding the provisions of paragraph (2) of this subsection, if an initial decision under this section is reviewed by further hearing, such review shall be completed, and a final decision made, not later than the 120th day following the date the further hearing is granted.

[(4) Review of, or appeal from, and initial decision under this section shall be conducted under section 557 of title 5. The Commission may prescribe rules limiting and defining the issues and pleadings on review under subsection (b) of such section.

[(g)(1) The Commission may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

[(A) reopen a proceeding;

[(B) grant rehearing, reargument, or reconsideration of an action of the Commission; and

[(C) change an action of the Commission.

An interested party may petition to reopen and reconsider an action of the Commission under this paragraph under regulations of the Commission.

[(2) The Commission may grant a rehearing, reargument, or reconsideration of an action of the Commission that was taken by a division or an employee board designated by the Commission if it finds that—

[(A) the action involved a matter of general transportation importance; or

[(B) the action would be affected materially because of clear and convincing new evidence or changed circumstances.

An interested party may petition for rehearing, reargument, or reconsideration of an action of the Commission under this paragraph under regulations of the Commission. The Commission may stay an action pending a final determination under this paragraph. The Commission shall complete reconsideration and take final action by the 120th day after the petition is granted.

[(3) If the Commission initiates any action under paragraph (1) of this subsection, final disposition under such paragraph shall be made not later than the 120th day following the date action is initiated.

[(h) A final decision under this section shall be effective on the date it is served on the parties, and a civil action to enforce, enjoin, suspend, or set aside the decision may be filed after that date.

[(i) In extraordinary circumstances, the Commission may extend a time period established by this section, except that the total of all such extensions with respect to any matter subject to the provisions of this section shall not exceed 90 days.

[§ 10324. Commission action

[(a) Unless otherwise provided in this subtitle, the Interstate Commerce Commission may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect.

[(b) An action of the Commission remains in effect under its own terms or until superseded. The Commission may change, suspend, or set aside any such action on notice. Notice may be given in a

manner determined by the Commission. A court of competent jurisdiction may suspend or set aside any such action.

[(c) An action of the Commission under section 10327 of this title is enforceable, unless the Commission stays or postpones such action.

[§ 10326. Limitations in rulemaking proceedings related to rail carriers

[(a) When, under section 553(e) of title 5, an interested person (including a governmental authority) petitions the Interstate Commerce Commission to begin a rulemaking proceeding in a matter related to a rail carrier providing transportation subject to this subtitle, the Commission, or a division, an individual Commissioner, an employee board, an employee delegated to act under section 10305 of this title, or another person authorized to act on behalf of the Commission for any part of the proceeding, shall grant or deny that petition by the 120th day after receiving it. If the petition is granted, the Commission, or its delegate, shall begin an appropriate proceeding as soon as practicable. If the petition is denied, the reasons for the denial shall be published in the Federal Register.

[(b)(1) If a petition is denied or action is not taken within the 120-day period under subsection (a) of this section, the petitioner may begin a civil action in an appropriate court of appeals of the United States for an order directing the Commission to begin a proceeding to take the action requested in the petition. A civil action under this subsection must be filed by the 60th day after the date of the denial or by the 60th day after the end of the 120-day period, whichever is appropriate.

[(2) The court of appeals shall order the Commission to begin the action requested in the petition to the Commission if the court finds that the action requested in that petition is necessary and failure to take that action will result in the continuation of practices that are not consistent with the public interest or are not in accordance with this subtitle. The finding of the court must be based on a preponderance of the evidence in the record before the Commission or its delegate, or, if the civil action is based on a petition on which action was not taken, in a new proceeding before the court. The court may not require the Commission to take action under this subtitle other than to begin a rulemaking proceeding.

[§ 10327. Commission action and appellate procedure in rail carrier proceedings

[(a) Notwithstanding sections 10322, 10323, and 10324(c) of this title, this section applies to a matter before the Interstate Commerce Commission involving a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title. However, other sections of this subtitle related to action of the Commission in proceedings involving rail carriers supersede this section to the extent that they are inconsistent with the provisions of this section related to deadlines.

[(b) A division, individual Commissioner, employee board, or employee delegated under section 10305 of this title to make an initial decision in a matter related to one of those rail carriers shall com-

plete all evidentiary proceedings related to the matter by the 180th day after assignment of the matter. The initial decision shall be submitted to the Commission in writing. If evidence is submitted in writing or testimony is taken at a public hearing, the initial decision shall be submitted to the Commission in writing by the 120th day after completion of all evidentiary proceedings and shall include—

[(1) specific findings of fact;

[(2) specific and separate conclusions of law;

[(3) an order; and

[(4) justification of the findings of fact, conclusions of law, and order.

[(c) The Commission, or a division designated by the Commission, may void the requirement of an initial decision under subsection (b) of this section and may require the matter to be considered by the Commission or that division on finding that the matter involves a question of Commission policy, a new or novel issue of law, or an issue of general transportation importance, or that it is required for the timely execution of its functions.

[(d) In a proceeding under this section, after the parties have had at least an opportunity to submit evidence in written form, the Commission shall give them an opportunity for briefs, written statements, or conferences of the parties. A conference of the parties must be chaired by a division, an individual Commissioner, an employee board, an employee delegated to act under section 10305 of this title, or an employee designated by the Commission.

[(e) Copies of an initial decision under subsection (b) of this section shall be served on the interested parties. An initial decision becomes an action of the Commission on the 20th day after it is served on the interested parties, unless—

[(1) an interested party files an appeal during the 20-day period, or by the end of an additional period of not more than 20 days, if authorized by the Commission or division designated by the Commission; or

[(2) The Commission stays or postpones the initial decision under subsection (g)(2) or (j) of this section within the period or additional period referred to in clause (1) of this subsection.

[(f)(1) Before an initial decision becomes an action of the Commission, the Commission, or a division or board designated by the Commission, may review the initial decision on its own initiative, and shall review an initial decision if an appeal is filed under subsection (e)(1) of this section. However, a board may not decide an appeal from an initial decision if the appeal may be further appealed to the Commission.

[(2) An initial decision may be reviewed on the record on which it is based or by a further hearing. If an initial decision is reviewed, it shall be stayed pending final determination of the matter, and it is an action of the Commission only after the final determination is made. If an appeal is filed under subsection (e)(1) of this section, the final determination shall be made by the 180th day after the appeal is filed.

[(3) Review of, or appeal from, an initial decision shall be conducted under section 557 of title 5. The Commission may prescribe

rules limiting and defining the issues and pleadings on review under section 557(b) of that title.

[(g)(1) The Commission may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

[(A) reopen a proceeding;

[(B) grant rehearing, reargument, or reconsideration of an action of the Commission; and

[(C) change an action of the Commission.

An interested party may petition to reopen and reconsider an action of the Commission under this paragraph under regulations of the Commission.

[(2) The Commission may grant a rehearing, reargument, or reconsideration of an action of the Commission that was taken by a division designated by the Commission if it finds that—

[(A) the action involves a matter of general transportation importance; or

[(B) the action would be affected materially because of clear and convincing new evidence or changed circumstances.

An interested party may petition for rehearing, reargument, or reconsideration of an action of the Commission under this paragraph under regulations of the Commission. The Commission may stay an action pending a final determination under this paragraph. The Commission shall complete reconsideration and take final action by the 120th day after the petition is granted.

[(h) An action of the Commission under this section and an action of a designated division under subsection (c) of this section is effective on the 30th day after service on the parties to the proceeding unless the Commission provides for it to become effective on an earlier date.

[(i) Notwithstanding this subtitle, an action of the Commission under this section and an action of a designated division under subsection (c) of 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.

[(j) The Commission may extend a time period established by this section for a period of not more than 90 days. The extension shall be granted if a majority of the Commissioners agree to it by public vote.

[(k) If an extension granted under subsection (j) of this section is not sufficient to allow for completion of necessary proceedings, the Commission may grant a further extension in an extraordinary situation if—

[(1) a majority of the Commissioners agree to the further extension by public vote; and

[(2) not later than the 15th day before expiration of the extension granted under subsection (j) of this section, the Commission submits a written report to the Congress that a further extension has been granted. The report shall include—

[(A) a full explanation of the reasons for the further extension;

[(B) the anticipated duration of the further extension;

[(C) the issues involved in the matter before the Commission; and

[(D) the names of personnel of the Commission working on the matter.

[§ 10328. Intervention

[(a) Designated representatives of employees of a carrier may intervene and be heard in a proceeding arising under this subtitle that affects those employees.

[(b)(1) Under regulations of the Interstate Commerce Commission, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this subtitle related to transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall be given to interested persons.

[(2) The Commission may adopt, after a rulemaking proceeding in accordance with the provisions of section 553 of title 5, a special procedure for providing interested parties reasonable notice of applications to provide transportation as a motor or water common or contract carrier or household goods freight forwarder, or to be a broker for transportation, under sections 10922, 10923, 10924, and 10928 of this title, or applications for removal of operating restrictions under section 10922 of this title. The special procedure may consist of printing and distributing to subscribers an independent publication to provide notice of such applications, if the Commission finds, as a result of its rulemaking proceedings, that such method of providing notice would not be unduly burdensome to the public.

[§ 10329. Service of notice in Commission proceedings

[(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall designate an agent in the District of Columbia, on whom service of notices in a proceeding before, and of actions of, the Commission may be made.

[(2) A motor carrier, a broker, a water carrier, or a household goods freight forwarder providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 of this title shall designate an agent by name and post office address on whom service of notices in a proceeding before, and of actions of, the Commission may be made.

[(b) A designation under subsection (a) of this section shall be in writing and filed with the Commission. A motor carrier or broker providing transportation under a certificate or permit issued under this subtitle shall also file the designation with the authority of each State in which it operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. The designation may be changed at any time in the same manner as originally made.

[(c) Except as otherwise provided, notices of the Commission shall be served as follows:

[(1) A notice of the Commission to a rail, express, sleeping car, or pipeline carrier is 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 Commission 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 Secretary of the Commission.

[(2) A notice to a motor carrier or broker is served personally or by mail on the motor carrier or broker or its designated agent. Service by mail on the designated agent is 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 or broker does not have a designated agent, service may be made by posting a copy of the notice in the office of the secretary or clerk of the authority having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of the State in which the carrier or broker maintains headquarters and in the office of the Secretary of the Commission.

[(3) A notice to a water carrier or household goods freight forwarder is served personally or by mail on the water carrier or household goods freight forwarder or its designated agent. Service by mail on the designated agent is 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 notice is served. If a water carrier or household goods freight forwarder does not have a designated agent, service may be made by posting the notice in the office of the Secretary of the Commission.

[(d) In a proceeding involving the lawfulness of classifications, rates, or practices of (1) a rail, express, sleeping car, or pipeline carrier that has not designated an agent under this section, or (2) a household goods freight forwarder, service of notice of the Commission on an attorney in fact who filed the tariff for the carrier constitutes service of notice on the carrier.

[(e) In a proceeding involving the lawfulness of classifications, rates, or practices—

[(1) service of notice of the suspension of a tariff on an attorney in fact of a carrier or broker, except a freight forwarder, constitutes service of notice on the carrier or broker if that attorney filed the tariff and, if the carrier is a water carrier, the notice specifies the classifications, rates, or practices involved; and

[(2) service of notice of the suspension of a joint tariff or schedule on a carrier or a broker, except a freight forwarder, that filed that tariff or schedule to which another carrier or broker is a party and, if the carrier is a water carrier, the notice specifies the classifications, rates, or practices involved, constitutes service of notice on all carriers or brokers that are parties to the joint tariff.

Service of notice under this subsection may be made by mail on that attorney or carrier at the address shown in the tariff.

[§ 10330. Service of process in court proceedings

[(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title 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 resi-

dence 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 Secretary of the Commission.

[(b) A motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, 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 Commission and with the authority of each State in which the motor carrier or broker operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. If a designation under this subsection is not made, service may be made on any agent of the carrier or broker within that State.

[(c) A designation under this section may be changed at any time in the same manner as originally made.

[SUBCHAPTER III—JOINT BOARDS

[§ 10341. Jurisdiction

[(a) The Interstate Commerce Commission may refer a matter related to motor carriers providing, or brokers for, transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, to a joint board established under section 10342 of this title for action. When the operation of a motor carrier or broker involves not more than 3 States, the Commission shall refer the following matters to a joint board for action when an opportunity for a proceeding is required or when the Commission finds that it is desirable:

[(1) an application for a certificate, permit, or license.

[(2) a suspension, change, or revocation of a certificate, permit, or license.

[(3) an application for approval and authorization of a consolidation, merger, or acquisition of control or of an operating contract.

[(4) a complaint about a violation by a motor carrier or broker of a requirement established under section 10321(a), 10525, 11101(b), or 11142(b) of this title.

[(5) a complaint about rates of motor carriers or practices of brokers.

[(b) Notwithstanding subsection (a) of this section, if the Commission is prevented by legal proceedings from referring a matter to a joint board, the Commission may determine the matter under subchapter II of this chapter.

[§ 10342. Establishment

[(a) The Interstate Commerce Commission may establish and abolish joint boards as necessary to carry out section 10341 of this title. Except as provided in this section, a joint board is composed

of a member from each State in which transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title is, or is proposed to be, provided. The Commission may appoint an individual nominated under subsection (b) of this section as a member of a joint board.

[(b) The member of a joint board from a State shall be nominated by the State authority having jurisdiction to regulate intrastate transportation by motor vehicle on the highways of that State. If there is no such authority in that State or if that authority does not nominate a member when requested by the Commission, the chief executive officer of the State may nominate the member. If both that State authority and the chief executive officer of that State do not nominate a member when requested, the board is constituted without a member from that State if the Commission has appointed members for at least 2 other States to the board.

[(c) When a matter required to be referred to a joint board involves the operation of a motor carrier in or through a place outside the United States, if only one State is involved or if only one State nominates an individual to be a member of the joint board, that State may nominate and the Commission may appoint not more than 3 members to the board.

[(d) A substitution in the membership of a joint board may be made at any time in the same manner as an initial nomination and appointment under this section.

[§ 10343. Powers

[(a) When conducting a proceeding involving a matter referred under section 10341 of this title, a joint board may make an initial decision under section 10322 of this title. Subchapter II of this chapter applies to an initial decision of a joint board. However, a joint board may report to the Interstate Commerce Commission its conclusions on evidence received without making an initial decision. When a joint board makes a report instead of an initial decision, the Commission shall decide the matter. The Commission may consider the conclusions of the joint board in making its decision.

[(b) A joint board may make an initial decision or report of its conclusions only by a majority vote. However, if only one member of the board participates in the proceeding, that member shall make the initial decision alone.

[(c) When a member of a joint board does not participate in a proceeding referred to that board, after notice of the proceeding, the State from which that member was appointed waives its right to act in that proceeding. The waiver does not affect the duty or power of remaining members of the board to continue the proceeding and make an initial decision.

[(d) In addition to decisions made under subsection (a) of this section, the Commission shall decide a matter referred to a joint board when—

[(1) the authority of each State from which a member of the board may be appointed waives action on a matter referred to that board;

[(2) a joint board does not act, or cannot agree, on a matter referred to it in 45 days after the matter is referred to it (or in another period authorized by the Commission); or

[(3) a member is nominated for only one State, except as provided in section 10342(c) of this title.

[§ 10344. Administration

[(a) Meetings and procedures of joint boards shall be conducted under regulations of the Interstate Commerce Commission. The Commission may designate an employee appointed under section 3105 of title 5 to advise and assist a joint board.

[(b) When practicable and when directed by the Commission, a proceeding involving a matter referred to a joint board shall be held at a place in the United States that is convenient to the parties to the proceeding.

[(c) The members of joint boards and employees designated to advise and assist them under subsection (a) of this section may administer oaths, subpena witnesses and the production of records, and take depositions under section 10321 of this title related to matter referred to the boards.

[(d) When carrying out this subtitle, members of joint boards shall receive an allowance for travel and subsistence expenses as the Commission shall provide.

[(e) A member of a joint board may not have a pecuniary interest in, hold an official relation to, or own securities of, a carrier providing transportation by any mode.

[(f) The Administrator of General Services shall assign space and facilities in the Interstate Commerce Commission building not required by the Commission for the use of the national organization of the State commissions and their representatives. The space and facilities shall be available for the use of joint boards and for members and representatives of those boards cooperating with the Commission or with another department, agency, or instrumentality of the United States Government. If suitable space is not available in the Interstate Commerce Commission building, the Administrator shall assign space in another building in convenient proximity to it.

[SUBCHAPTER IV—RAIL SERVICES PLANNING OFFICE

[§ 10361. Organization

[The Rail Services Planning Office is an office in the Interstate Commerce Commission.

[§ 10362. Duties

[(a) In this section—

[(1) "avoidable costs of providing transportation", "reasonable management fee", "reasonable return on the value", and "revenue attributable to the rail properties" have the same meanings as they have when used in section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744).

[(2) "avoidable cost of providing rail freight transportation" has the same meaning as it has when used in section 10905(b)(2)(A) of this title.

[(b) The Rail Services Planning Office shall—

[(1) assist the Interstate Commerce Commission in studying and evaluating proposals, submitted to the Commission under subchapter III of chapter 113 of this title for a merger, consolidation, unification, or coordination project, joint use of tracks or other facilities, or acquisition or sale of assets involving a rail carrier subject to this subtitle;

[(2) assist the Commission in developing, with respect to economic relation of transportation, policies likely to result in a more competitive, energy-efficient, and coordinated transportation system using each mode of transportation to its maximum advantage to meet the transportation needs of the United States;

[(3) assist States and local and regional transportation authorities in deciding whether to provide rail transportation continuation subsidies to continue in operation particular rail properties, by establishing criteria for determining whether particular rail properties are suitable for rail transportation continuation subsidies;

[(4) conduct continuously an analysis of the national rail transportation needs, evaluate the policies, plans, and programs of the Commission on the basis of the analysis, and advise the Commission of the results of the evaluation;

[(5) prescribe regulations that contain standards for the computation of subsidies for rail passenger transportation (except passenger transportation compensation disputes subject to the jurisdiction of the Commission under sections 24308(a) and 24903(c)(2) of this title) that are consistent with the compensation principles described in the final system plan established under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and that avoid cross-subsidization among commuter, intercity, and freight rail transportation;

[(6) maintain, and from time to time revise and republish after a proceeding under section 553 of title 5, standards for determining the revenue attributable to the rail properties, the avoidable costs of providing transportation, a reasonable return on the value, and a reasonable management fee;

[(7) maintain regulations that—

[(A) develop an accounting system permitting the collection and publication by profitable rail carriers providing transportation over lines scheduled for abandonment, of information necessary for an accurate determination of the attributable revenues, avoidable costs, and operations of light density lines as operating and economic units; and

[(B) determine the avoidable cost of providing rail freight transportation; and

[(8) carry out other duties conferred on the Office by law.

[(c) The criteria referred to in subsection (b)(3) of this section shall provide that rail properties are suitable for rail transportation continuation subsidies if the cost of the required subsidy to the taxpayers for the properties each year is less than—

[(1) the cost of termination of rail transportation over the properties measured by increased fuel consumption and operational costs for alternative modes of transportation;

[(2) the cost to the gross national product in terms of reduced output of goods and services;

[(3) the cost of relocating or assisting, through unemployment, retraining, and welfare benefits, individuals and firms adversely affected if the rail transportation is terminated; and

[(4) the cost to the environment measured by damage caused by increased pollution.

[(d) The Office may at any time revise and republish the standards and regulations required by this section to incorporate changes made necessary by the accounting system developed under subsection (b)(7) of this section.

[§ 10363. Director

[(a) The Director is the head of the Rail Services Planning Office and is responsible for administering and carrying out the duties of the Office.

[(b) The Director is appointed for a term of 6 years by the Chairman of the Interstate Commerce Commission with the concurrence of at least 5 members of the Commission. The Director may be removed by the Commission only for cause.

[(c) The Director is appointed without regard to those provisions of title 5 governing appointments in the competitive service and is paid without regard to chapter 51 and subchapter III of chapter 53 of title 5. However, the annual rate of basic pay of the Director may not exceed the maximum rate payable under section 5376 of title 5.

[(d) The Director is subject to the direction of, and shall report to, a Commissioner or the Chairman, as designated by the Chairman.

[§ 10364. Powers

[(a) With the concurrence of the Commissioner designated under section 10363(d) of this title or, if the Director of the Rail Services Planning Office and the Commissioner disagree (and that Commissioner is not the Chairman), with the concurrence of the Chairman of the Commission, the Director may enter into agreements or other transactions necessary to carry out the duties of the Office. The transactions may be entered into with any person, including a governmental authority, and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

[(b) On written request of the Director for assistance, each department, agency, and instrumentality of the United States Government shall consider the request, and may furnish assistance the Director considers necessary to carry out the duties of the Office. Assistance may be furnished on a reimbursable or nonreimbursable basis. Assistance includes the transfer of an officer or employee, with the consent, and without prejudice to the position and rating, of the officer or employee.

[SUBCHAPTER V—OFFICE OF RAIL PUBLIC COUNSEL

[§ 10381. Organization

[The Office of Rail Public Counsel is an independent office affiliated with the Interstate Commerce Commission.

[§ 10382. Duties; standing

[(a) The Office of Rail Public Counsel—

[(1) may petition the Interstate Commerce Commission to begin a proceeding on a matter within the jurisdiction of the Commission involving a rail carrier subject to this subtitle;

[(2) may seek judicial review of Commission action on a matter involving a rail carrier providing transportation subject to this subtitle, to the extent, and on the same basis, that a person may seek judicial review;

[(3) shall solicit, study, evaluate, and present before an informal or formal proceeding of the Commission, the views of those communities and users of rail transportation affected by a proceeding begun by, or pending before, the Commission, when the Director of the Office determines, for whatever reason (such as size or location), that any such community or user might not otherwise be represented adequately at the proceeding;

[(4) shall—

[(A) before the Commission and other departments, agencies, and instrumentalities of the United States Government when the policies and activities of any such department, agency, or instrumentality affect rail transportation subject to the jurisdiction of the Commission, evaluate and represent the public interest in safe, efficient, reliable, and economical rail transportation; and

[(B) assist in constructively representing that public interest by other means;

[(5) shall present the views of users, the general public, affected communities, and, when appropriate, providers of rail transportation in proceedings of departments, agencies, and instrumentalities of the United States Government related to—

[(A) the impact of energy proposals and actions on rail transportation; and

[(B) whether transportation policy is consistent with the energy policies of the United States Government;

[(6) in carrying out its duties under clauses (1)–(5) of this subsection, shall assist the Commission in developing a public interest record in proceedings before the Commission; and

[(7) shall carry out other duties conferred on the Office by law.

[(b) The Office has standing as a party to any informal or formal proceeding that is pending or begun before the Commission involving a rail carrier providing transportation subject to this subtitle.

[§ 10383. Director

[(a) The Director is the head of the Office of Rail Public Counsel and is responsible for administering and carrying out the duties of the Office.

[(b) The Director is appointed by the President, by and with the advice and consent of the Senate, for a term of 4 years.

[(c) The Director is paid without regard to chapter 51 and subchapter III of chapter 53 of title 5. However, the annual rate of basic pay of the Director may not exceed the maximum rate payable under section 5376 of title 5.

[§ 10384. Office staff

[The Director of the Office of Rail Public Counsel may—

[(1) appoint and fix the pay of employees of the Office; and

[(2) procure under section 3109 of title 5 the temporary or intermittent services of experts and consultants.

[§ 10385. Powers

[(a) Without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), the Director of the Office of Rail Public Counsel may enter into agreements or other transactions necessary to carry out the duties of the Office.

[(b) On request of the Director for information, each department, agency, and instrumentality of the United States Government may furnish the information requested.

[§ 10386. Reports

[The Director of the Office of Rail Public Counsel shall submit each month to the Chairman of the Interstate Commerce Commission a report on the activities of the Office for the preceding month. In its annual report to Congress, the Commission shall include its evaluation and recommendations with respect to the activities, accomplishments, and shortcomings of the Office.

[§ 10387. Budget requests and estimates

[The Office of Rail Public Counsel shall submit its budget requests and budget estimates concurrently to Congress and to the President.

[§ 10388. Authorization of appropriations

[There is authorized to be appropriated to the Office of Rail Public Counsel to carry out this subchapter not to exceed $1,200,000 for the fiscal year ending September 30, 1980.

[CHAPTER 105—JURISDICTION

[SUBCHAPTER I—RAIL, RAIL-WATER, EXPRESS, AND PIPELINE CARRIER TRANSPORTATION

[Sec.
[10501. General jurisdiction.
[10502. Express carrier transportation.
[10503. Railroad and water transportation connections and rates.
[10504. Exempt rail mass transportation.
[10505. Authority to exempt rail carrier and motor carrier transportation.

[SUBCHAPTER II—MOTOR CARRIER TRANSPORTATION

[10521. General jurisdiction.
[10522. Exempt transportation between Alaska and other States.
[10523. Exempt motor vehicle transportation in terminal areas.
[10524. Transportation furthering a primary business.
[10525. Exempt motor carrier transportation entirely in one State.
[10526. Miscellaneous motor carrier transportation exemptions.
[10527. Written contracts pertaining to certain interstate movements by motor vehicle.
[10528. Mixed loads of regulated and unregulated property.
[10529. Limited authority over cooperative associations.
[10530. Certificates of registration for certain foreign carriers.
[10531. Mass transportation exemption.

[SUBCHAPTER III—WATER CARRIER TRANSPORTATION

[10541. General jurisdiction.
[10542. Exempt bulk transportation.
[10543. Exempt incidental water transportation.
[10544. Miscellaneous water carrier transportation exemptions.

[SUBCHAPTER IV—FREIGHT FORWARDER SERVICE

[10561. General jurisdiction.
[10562. Repealed.

[SUBCHAPTER I—RAIL, RAIL-WATER, EXPRESS, AND PIPELINE CARRIER TRANSPORTATION

[§ 10501. General jurisdiction

[(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation—

[(1) by rail carrier, express carrier, sleeping car carrier, water common carrier, and pipeline carrier that is—

[(A) only by railroad;

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

[(C) by pipeline or by pipeline and railroad or water when transporting a commodity other than water, gas, or oil; and

[(2) to the extent such jurisdiction is not limited by subsection (b) of this section or the extent the transportation is in the United States and is between a place in—

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

[(B) the District of Columbia and another place in the District of Columbia;

[(C) a State and a place in a territory or possession of the United States;

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

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

[(F) the United States and another place in the United States through a foreign country; or

[(G) the United States and a place in a foreign country.

[(b) The Commission does not have jurisdiction under subsection (a) of this section over—

[(1) the transportation of passengers or 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 subtitle; or

[(2) transportation by a water common carrier when that transportation would be subject to this subchapter only because the water common carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, a switching, terminal, lighterage, care rental, trackage, handling, or other charge by a rail carrier for services in the switching, drayage, lighterage, or corporate limits of a port terminal or district.

[(c) This subtitle 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 Commission under this subchapter unless (1) the transportation is deemed to be subject to the jurisdiction of the Commission pursuant to section 11501(b)(4)(B) of this title, or (2) the State requirement is inconsistent with an order of the Commission issued under this subtitle or is prohibited under this subtitle.

[(d) The jurisdiction of the Commission and of State authorities (to the extent such authorities are authorized to administer the standards and procedures of this subtitle pursuant to this section and section 11501(b) of this title) over transportation by rail carriers, and the remedies provided in this subtitle with respect to the rates, classifications, rules, and practices of such carriers, is exclusive.

[§ 10502. Express carrier transportation

[The Interstate Commerce Commission has jurisdiction under this subchapter, and not under subchapter II or III of this chapter, over transportation of an express carrier—

[(1) by motor vehicle, to the extent the transportation was subject to the jurisdiction of the Commission on September 18, 1940, under part I of the Interstate Commerce Act (24 Stat. 379), as amended; and

[(2) by water in providing express transportation.

[§ 10503. Railroad and water transportation connections and rates

[(a) When a rail carrier and a water common carrier may or do provide jointly, transportation, not entirely in one State from a place in the United States to another place in the United States, even if part of the transportation is outside the United States, the Interstate Commerce Commission has the following jurisdiction over that transportation:

[(1) To establish a physical connection between the railroad lines of the rail carrier and the dock at which an interchange is to be made, the Commission may—

[(A) require the rail carrier to make a suitable connection between its lines and tracks that have been constructed from the dock to the limits of the railroad right-of-way;

[(B) subject to the same restrictions on findings of public convenience and necessity and other matters that are imposed on construction under sections 10901, 10902, and 10907 of this title, require the rail carrier or water common carrier, or both, to construct to the dock at least one track connecting with the lines of the rail carrier;

[(C) determine and prescribe the conditions under which a connecting track is to be operated; and

[(D) in the construction or operation of the track, determine the sum to be paid to, or by, either carrier.

[(2) The Commission may—

[(A) prescribe proportional rates, maximum proportional rates, minimum proportional rates, or maximum and mini-

mum proportional rates, of a rail carrier to and from the ports to which the passengers or property is transported by the water common carrier; and

[(B) determine the passengers, property, vessels, and on which conditions those rates apply.

In this paragraph, "proportional rates" means those rates that differ from the corresponding local rates to and from a port and apply only to passengers or property brought to the port or carried from the port by a water common carrier.

[(b) The Commission may act under this section only after a full hearing. An order entered as the result of an action may be conditioned on giving security for the payment of an amount of money or the discharge of an obligation that is required to be paid or discharged under that order.

[§ 10504. Exempt mass transportation

[(a) In this section—

[(1) "local governmental authority"—

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

[(B) includes a person or entity that contracts with the local governmental authority to provide transportation services.

[(2) "mass transportation" means transportation services described in section 5302(a) of this title that are provided by rail.

[(b) The Interstate Commerce Commission does not have jurisdiction under this subtitle over mass transportation provided by a local governmental authority if—

[(1) the Commission would have jurisdiction but for this section; and

[(2) the fares of the local governmental authority, or its authority to apply to the Commission for changes in those fares, is subject to the approval or disapproval of the chief executive officer of the State in which the transportation is provided.

[(c) Notwithstanding subsection (b) of this section, a local governmental authority, described in subsection (b), is subject to applicable laws of the United States related to—

[(1) safety;

[(2) the representation of employees for collective bargaining; and

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

[§ 10505. Authority to exempt rail carrier and motor carrier transportation

[(a) In a matter related to a rail carrier providing transportation, or a motor carrier providing transportation of property other than household goods, or in non-contiguous domestic trade, subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service when the Commission finds that the application of a provision of this subtitle—

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

[(2) either (A) the transaction or service is of limited scope, or (B) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power.

[(b) The Commission 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.

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

[(d) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 or section 10101a of this title.

[(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 11707 of this title. Nothing in this subsection or section 11707 of this title shall prevent rail carriers from offering alternative terms nor give the Commission the authority to require any specific level of rates or services based upon the provisions of section 11707 of this title.

[(f) The Commission may exercise its authority under this section to exempt transportation that is provided by a rail carrier, or a motor carrier providing transportation of property other than household goods, or in non-contiguous domestic trade, as a part of a continuous intermodal movement.

[(g) The Commission may not exercise its authority under this section (1) to authorize intermodal ownership that is otherwise prohibited by this title, (2) to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle, (3) to relieve a motor carrier of property or other person from the application or enforcement of the provisions of sections 10706, 10761, 10762, 10927, and 11707 of this title, or (4) to exempt a motor carrier of property from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage; insurance; antitrust immunity for joint line rates and routes, classification of commodities (including uniform packaging rules), uniform bills of lading, or standardized mileage guides; or safety fitness.

[SUBCHAPTER II—MOTOR CARRIER TRANSPORTATION

[§ 10521. General jurisdiction

[(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation by motor carrier and the procurement of that transportation, except by a freight forwarder (other than a household goods freight forwarder), 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.

[(b) This subtitle does not—

[(1) except as provided in sections 10922(c)(2), 10935, 10936, 11501(e), and 11501(h) of this title, affect the power of a State to regulate intrastate transportation provided by a motor carrier;

[(2) except as provided in sections 10922(c)(2), and 11501(e), authorize the Commission to prescribe or regulate a rate for intrastate transportation provided by a motor carrier;

[(3) except as provided in section 10922(c)(2), of this title, allow a motor carrier to provide intrastate transportation on the highways of a State; or

[(4) except as provided in section 11504(b) of this title, affect the taxation power of a State over a motor carrier.

[§ 10522. 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 10521 of this title is provided in a foreign country—

[(1) the Interstate Commerce Commission does not have 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 subtitle related to rates and practices applicable to the transportation.

[§ 10523. Exempt motor vehicle transportation in terminal areas

[(a)(1) The Interstate Commerce Commission does not have 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 the jurisdiction of the Commission under subchapter I of this chapter;

[(ii) a water carrier subject to the jurisdiction of the Commission under subchapter III of this chapter; or

[(iii) a household goods freight forwarder subject to the jurisdiction of the Commission under subchapter IV of this chapter; and

[(C) is incidental to transportation provided by the carrier or service provided by the household goods freight forwarder that is subject to the jurisdiction of the Commission under any of those subchapters.

[(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided by such a rail carrier, under subchapter III of this chapter when provided by such a water carrier, and under subchapter IV of this chapter when provided by such a household goods freight forwarder.

[(b)(1) Except to the extent provided in paragraph (2) of this subsection, the Commission does not have 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 or express carrier subject to the jurisdiction of the Commission under subchapter I of this chapter;

[(ii) a motor carrier subject to the jurisdiction of the Commission under this subchapter;

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

[(iv) a household goods freight forwarder subject to the jurisdiction of the Commission under subchapter IV of this chapter.

[(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is considered transportation provided by the carrier or service provided by the household goods freight forwarder for whom the transportation was provided and is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided for such a rail carrier or express carrier, under this subchapter when provided for such a motor carrier, under subchapter III of this chapter when provided for such a water carrier, and under subchapter IV of this chapter when provided for such a household goods freight forwarder.

[§ 10524. Transportation furthering a primary business

[(a) The Interstate Commerce Commission does not have jurisdiction under this subchapter 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) The Commission does not have jurisdiction under this subchapter 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 if—

[(1) the parent corporation notifies the Commission of its intent or one of its subsidiaries' intent to provide the transportation;

[(2) the notice contains a list of participating subsidiaries and an affidavit that the parent corporation owns directly or indirectly a 100 percent interest in each of the subsidiaries;

[(3) the Commission publishes the notice in the Federal Register within 30 days of receipt; and

[(4) a copy of the notice is carried in the cab of all vehicles conducting the transportation.

[(c) 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.

[§ 10525. Exempt motor carrier transportation entirely in one State

[(a) The Interstate Commerce Commission shall exempt transportation of a motor carrier subject to the jurisdiction of the Commission under this subchapter from compliance with this subtitle when—

[(1) the motor carrier provides transportation entirely in one State; and

[(2) the Commission finds that the nature or quantity of transportation provided by the motor carrier does not substantially affect or impair uniform regulation by the Commission of motor carrier transportation in carrying out the transportation policy of section 10101 of this title.

[(b) The Commission may begin a proceeding under this section on its own initiative or on application of a motor carrier, a State authority having jurisdiction to regulate intrastate transportation by motor vehicle on the highways of that State, or an interested party. An application must be under oath and must contain information required by Commission regulation. The Commission may exempt the transportation by motor carrier or class of motor carriers. When an exemption is granted, the Commission shall issue a certificate of exemption describing the conditions required by the public interest under which the certificate is issued.

[(c) When an application for exemption is accompanied by a certificate of the authority of the State in which the applicant provides transportation stating the finding of the State authority that the applicant is entitled to a certificate of exemption under this section, the exemption is effective on the 60th day after the application is filed with the Commission unless the Commission denies the application before that date. If not denied before that date, the exemption remains effective until the Commission thereafter denies or revokes it.

[(d) The Commission may revoke any part of an exemption granted under this section when it finds that the nature or quantity of the transportation by the motor carrier or class of motor carriers affects or impairs, or is likely substantially to affect or impair uniform regulation by the Commission of motor carrier transportation in carrying out the transportation policy of section 10101 of this title. If the exemption is revoked, the Commission shall restore

without further proceedings the authority any such motor carrier had to provide transportation subject to the jurisdiction of the Commission under this subchapter at the time the exemption was effective.

[(e) Notwithstanding the provisions of this section, the Commission has no 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 the jurisdiction of the Commission under this subsection and, to the extent provided by a motor carrier operating solely within the State of Hawaii, transportation exempt from the jurisdiction of the Commission under section 10523 of this title.

[(f) State regulation of the operations of a motor carrier covered by an exemption under this section is not a burden on interstate or foreign commerce.

[§ 10526. Miscellaneous motor carrier transportation exemptions

[(a) The Interstate Commerce Commission does not have jurisdiction under this subchapter 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 common 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;

[(ii) may not exceed in each fiscal year 25 percent of the total transportation of the cooperative associa-

tion or federation between those places, measured by tonnage; and

[(iii) shall be provided only after the cooperative association or federation notifies the Commission of its intent to provide the transportation; 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 of Transportation) 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 10924(f) of this title; or

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

[(b) Except to the extent the Commission finds it necessary to exercise jurisdiction to carry out the transportation policy of section 10101 of this title, the Commission does not have jurisdiction under this subchapter 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 the jurisdiction of the Commission 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 certificate or permit issued, under this subtitle; or

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

[§ 10527. Written contracts pertaining to certain interstate movements by motor vehicle

[(a) Notwithstanding the provisions of section 10526(a)(6) of this title, the Interstate Commerce Commission, in cooperation with the Secretary of Agriculture, shall, where appropriate, require by regulation the use of written contracts for the interstate movement by motor vehicle of property described in such section and for brokerage services to be provided in connection with the interstate movement of such property.

[(b) A written contract between an owner or operator of a motor vehicle and a broker, shipper of property, or receiver of property which is required to be used by the Commission under this section shall specify the arrangements, including compensation, with respect to loading and unloading of the property transported under such contract. Whenever the shipper or receiver of the property transported under such contract requires that the operator of the vehicle load or unload any part of the property onto or from the vehicle contrary to any provision of such contract, the shipper or re-

ceiver shall compensate the owner or operator of the vehicle for all costs associated with loading or unloading that part of the property. Any person who knowingly violates the preceding sentence is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

[(c) The Commission shall prescribe, by regulation, the minimum requirements and conditions of written contracts required to be used under this section.

[§ 10528. Mixed loads of regulated and unregulated property

[A motor carrier of property providing transportation exempt from the jurisdiction of the Commission under paragraph (6), (8), (11), (12), or (13) of section 10526(a) of this title 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 certificate issued under section 10922(b) of this title or under a permit issued under section 10923 of this title. 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 certificate or permit.

[§ 10529. Limited authority over cooperative associations

[(a) Notwithstanding section 10526(a)(5) of this title, 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 which is required to notify the Commission under such section 10526(a)(5) shall prepare and maintain such records relating to transportation provided by such association or federation, in such form, as the Commission may require by regulation to carry out the provisions of such section 10526(a)(5). The Commission or an employee designated by the Commission, 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) Notwithstanding section 10526(a)(5) of this title, the Commission may require a cooperative association or federation of cooperative associations described in subsection (a) of this section to file reports with the Commission containing answers to questions about transportation provided by such association or federation.

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

[(d)(1) A person required to make a report to the Commission, 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 by the Commission, is liable to the United States Government 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) Trial in a civil action under paragraph (1) of this subsection 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) 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) A person required to make a report to the Commission, 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 the Commission requires the question to be answered, (3) willfully does not maintain that record in the form and manner prescribed by the Commission, (4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record with the Commission 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 of the Commission issued under this section, shall be fined not more than $5,000.

[§ 10530. Certificates of registration for certain foreign carriers

[(a) In this section—

[(2) "foreign motor carrier" means a person (including a motor carrier of property but excluding a motor private carrier)—

[(A)(i) which is domiciled in a contiguous foreign country; or

[(ii) which is owned or controlled by persons of a contiguous foreign country and is not domiciled in the United States; and

[(B) in the case of a person which is not a motor carrier of property, which provides interstate transportation of property (including exempt items) 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)).

[(3) "foreign motor private carrier" means a person (including a motor private carrier but excluding a motor carrier of property)—

[(A)(i) which is domiciled in a contiguous foreign country; or

[(ii) which is owned or controlled by persons of a contiguous foreign country and is not domiciled in the United States; and

[(B) in the case of a person which is not a motor private carrier, which provides interstate transportation of property (including exempt items) 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)).

[(b) CERTIFICATION REQUIREMENT.—

[(1) FOR FOREIGN MOTOR CARRIERS.—Except as provided in this section and sections 10922 and 10923, no foreign motor carrier may provide interstate transportation of property (including exempt items) by motor vehicle unless the Commission has issued to such person a certificate of registration under this section, or a certificate or permit under subchapter II of chapter 109, authorizing such person to provide such transportation.

[(2) FOR FOREIGN MOTOR CARRIERS.—Except as provided in this section, no foreign motor private carrier may provide interstate transportation of property (including exempt items) by motor vehicle unless the Commission has issued to the carrier a certificate of registration under this section authorizing the carrier to provide such transportation.

[(c) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Commission shall issue a certificate of registration to any foreign motor carrier authorizing the carrier to provide interstate transportation of property (including exempt items) by motor vehicle, and to any foreign motor private carrier authorizing the carrier to provide interstate transportation of property (including exempt items) in by motor vehicle, if—

[(1) the Commission finds that the carrier is fit, willing, and able—

[(A) to provide the transportation to be authorized by the certificate; and

[(B) to comply with this subtitle and regulations of the Commission; and

[(2) the carrier demonstrates to the satisfaction of the Commission that the carrier has paid (or will pay in a timely manner) all taxes imposed by section 4481 of the Internal Revenue Code of 1954 on any motor vehicle which such carrier operated in the United States in the most recent taxable period (as such term is defined under section 4482(c) of such Code).

[(d) A foreign motor carrier and a foreign motor private carrier must file an application with the Commission for a certificate of registration under this section to provide interstate transportation by motor vehicle. The Commission may approve any part of the application or deny the application. The application must—

[(1) be under oath;

[(2) contain such information as the Commission may require by regulation; and

[(3) be filed with the Commission at such times as the Commission may require by regulation.

[(e) The requirement that foreign motor carriers and foreign motor private carriers issued certificates of registration under this section be fit, willing, and able means—

[(1) safety fitness; and

[(2) proof of minimum financial responsibility—

[(A) under section 30 of the Motor Carrier Act of 1980, and

[(B) under the laws of the States in which the carrier is operating,

to the extent applicable.

[(f) Each certificate of registration issued under this section shall specify the transportation to be provided under the certificate.

[(g)[1] IDENTIFICATION.—

[(1) IN VEHICLE.—Any motor vehicle which is used by a foreign motor carrier or by a foreign motor private carrier to provide interstate transportation of property (including exempt items) by motor vehicle under a certificate issued under this section or section 10922 or under a permit issued under section 10923 shall have a copy of such certificate or permit, as the case may be, in such motor vehicle at any time such vehicle is being used to provide such transportation.

[(2) DENIAL OF ENTRY.—The Commission, the Secretary of Transportation, and the Secretary of the Treasury shall deny entry into the United States of any motor vehicle in which there is not a copy of the certificate or permit required to be in such vehicle by paragraph (1) of this subsection.

[(h) When a certificate of registration is issued under this section, the Commission may prescribe such conditions on the transportation to be provided under the certificate as may be necessary to carry out the objectives of this section.

[(i)(1) Subject to paragraph (3) of this subsection, this section shall not apply with respect to any contiguous foreign country with respect to which a moratorium is not in effect under section 10922(l) of this title on the effective date of this section.

[(2) The President of the United States may waive the requirements of this section with respect to any contiguous foreign country if the President determines that such waiver is in the national interest and notifies, in writing, the Congress of such waiver before the date on which such waiver is to take effect. In any case in which the requirements of this section apply with respect to a continguous foreign country which substantially prohibits grants of authority to persons from the United States to provide transportation by motor vehicle for compensation in such foreign country, such waiver shall not take effect before the 60th day following the date on which the Congress is notifed of such waiver.

[(3) The President of the United States may, by order, make the requirements of this section applicable with respect to any contiguous foreign country if—

[(A) the President determines that making such requirements so applicable is in the national interest; and

[(B) the President—

[(i) notifies, in writing, the Congress of the issuance of such order; and

[(ii) has published a copy of such order in the Federal Register;

at least 30 days before such order takes effect.

[§ 10531. Mass transportation exemption

[(a) DEFINITIONS.—The definitions in section 5302(a) of this title apply to this section.

[(b) PETITION FOR GRANTING EXEMPTIONS.—A State or local governmental authority may petition the Interstate Commerce Commission for an exemption from the jurisdiction of the Commission under this subchapter for mass transportation the authority provides or has provided to it by contract. Not later than 180 days after the Commission receives a petition and after notice and a reasonable opportunity for a proceeding, the Commission shall exempt the State, local governmental authority, or contractor unless the Commission finds that—

[(1) the public interest would not be served by an exemption;

[(2) the exemption would result in an unreasonable burden on interstate or foreign commerce; or

[(3) a State or local governmental authority may not regulate the mass transportation to be exempt under this section.

[(c) APPLICATION OF OTHER LAWS.—All applicable laws of the United States related to safety and to representation of employees for collective bargaining purposes, retirement, annuities, and unemployment systems, and all other laws related to employee–employer relations, apply to a State or local governmental authority that was granted, or whose contractor was granted, an exemption under this section.

[(d) CHANGING AND REVOKING EXEMPTIONS.—The Commission may change or revoke an exemption if it finds that new evidence, material error, or changed circumstances exist that materially affect the original order. The Commission may act on its own initiative or on application of an interested party.

[SUBCHAPTER III—WATER CARRIER TRANSPORTATION

[§ 10541. General jurisdiction

[(a) Subject to this chapter and other law, the Interstate Commerce Commission has 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 rail carrier or 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 Commission only has jurisdiction over that part of the transportation provided—

[(A) by rail carrier or 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 rail carrier or 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 rail carrier or 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) If transportation by a carrier would be subject to the jurisdiction of the Commission under both subsection (a) of this section and subchapter I of this chapter, then that transportation is subject to the jurisdiction of the Commission under subsection (a) of this section. However, that transportation is also subject to the jurisdiction of the Commission under subchapter I of this chapter to the extent that this subtitle imposes requirements on transportation by carriers subject to the jurisdiction of the Commission under subchapter I that are not imposed on transportation by carriers subject to the jurisdiction of the Commission under subsection (a) of this section.

[(c) This subtitle does not—

[(1) affect the power of a State to regulate intrastate transportation provided by a water carrier; or

[(2) authorize the Commission to prescribe or regulate a rate for intrastate transportation by a water carrier.

[§ 10542. Exempt bulk transportation

[(a)(1) The Interstate Commerce Commission does not have jurisdiction under this subchapter over transportation by a water carrier of commodities in bulk that, under an existing custom of the trade in the handling and transportation of commodities in bulk as of June 1, 1939—

[(A) are loaded and carried without wrappers or containers; and

[(B) are received and delivered by the carrier without transportation mark or count.

[(2) This subsection does not apply to transportation subject to the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.) on September 18, 1940.

[(b) The Commission does not have jurisdiction under this subchapter over transportation by a water contract carrier of commodities in bulk in a non-oceangoing vessel on a normal voyage during which—

[(1) the cargo space of the vessel is used for carrying not more than 3 commodities in bulk; and

[(2) the vessel passes in or through waters that are international for navigational purposes by a treaty to which the United States is a party.

[(c) The Commission does not have jurisdiction under this subchapter over transportation by water carrier of liquid cargoes in bulk in a tank vessel—

[(1) designed exclusively for transporting such a cargo; and

[(2) having a certificate of inspection issued under part B of subtitle II of title 46 endorsed to show that the vessel complies with chapter 37 of title 46.

[§ 10543. Exempt incidental water transportation

[(a)(1) The Interstate Commerce Commission does not have jurisdiction under this subchapter when the transportation—

[(A)(i) is provided in a terminal area and is a transfer, collection, or delivery; or

[(ii) is flotage, car ferrying, lighterage, or towage;

[(B) is provided by—

[(i) a rail carrier subject to the jurisdiction of the Commission under subchapter I of this chapter; or

[(ii) a motor carrier subject to the jurisdiction of the Commission under subchapter II of this chapter; and

[(C) is incidental to transportation provided by the carrier subject to the jurisdiction of the Commission under either of those subchapters.

[(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided by such a rail carrier and under subchapter II of this chapter when provided by such a motor carrier.

[(b)(1) Except to the extent provided in paragraph (2) of this subsection, the Commission does not have jurisdiction under this subchapter over transportation by water when the transportation—

[(A)(i) is provided in a terminal area and is a transfer, collection, or delivery; or

[(ii) is flotage, car ferrying, lighterage, or towage; and

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

[(i) a rail carrier or express carrier subject to the jurisdiction of the Commission under subchapter I of this chapter;

[(ii) a motor carrier subject to the jurisdiction of the Commission under subchapter II of this chapter; or

[(iii) a water carrier subject to the jurisdiction of the Commission under this subchapter.

[(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is considered transportation provided by the carrier for whom the transportation was provided and is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided for such a rail carrier or express carrier, under subchapter II of this chapter when provided for such a motor carrier, and under this subchapter when provided for such a water carrier.

[§ 10544. Miscellaneous water carrier transportation exemptions

[(a) Except to the extent the Interstate Commerce Commission finds it necessary to exercise jurisdiction to carry out the transportation policy of section 10101 of this title, the Commission does not

have jurisdiction under this subchapter over transportation by water carrier when the transportation is provided—

[(1) entirely in one harbor or between places in contiguous harbors, other than transportation under common control, management, or arrangement for a continuous carriage or shipment to or from a place outside the limits of the harbor or the contiguous harbors;

[(2) by a vessel of not more than 100 tons carrying capacity or 100 indicated horsepower;

[(3) by a vessel carrying only passengers and equipped to carry not more than 16 passengers;

[(4) by a ferry;

[(5) by a water carrier transporting equipment of contractors used, or to be used, in construction or repair for the water carrier; or

[(6) to carry out salvage operations.

[(b) The Commission may exempt from its jurisdiction under this subchapter the transportation of passengers between places in the United States through a foreign port when the Commission finds its jurisdiction is not necessary to carry out the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on its own initiative or on application of an interested party.

[(c) The Commission shall exempt from its jurisdiction under this subchapter the transportation of commodities by water contract carrier when the Commission finds that the transportation is not actually and substantially competitive with transportation provided by a carrier subject to the jurisdiction of the Commission under subchapter I or II of this chapter because of the inherent nature of the commodities transported, their requirement of special equipment, or their shipment in bulk. The Commission may prescribe conditions applicable to an exemption under this subsection. The Commission may begin a proceeding under this subsection on application of a water contract carrier.

[(d)(1) The Commission does not have jurisdiction under this subtitle over transportation by a water common carrier provided between the 48 contiguous States or the District of Columbia, and Alaska if, before January 3, 1959—

[(A) the carrier provided that transportation, was also a motor common carrier, and has continued to provide the transportation since before that date; and

[(B) the transportation was subject to the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.) or the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

[(2) The transportation remains subject to the jurisdiction of the Federal Maritime Commission.

[(e) The Commission shall exempt the transportation of property on a vessel furnished by a water contract carrier to a person not a carrier providing transportation or service subject to the jurisdiction of the Commission under this subtitle when the person uses the vessel to transport its own property and the Commission finds its jurisdiction is not necessary to carry out the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this section on its own initiative or on application of

an interested party. The Commission may exempt the transportation by person or class of persons. The Commission shall specify the period of time during which the exemption is effective. The Commission may revoke the exemption when it finds that its jurisdiction over the transportation of the property is necessary to carry out the transportation policy of section 10101. The Commission may deny or revoke an exemption only after an opportunity for a proceeding.

[(f)(1) The Commission shall exempt the transportation of property by a water carrier under this subchapter when the Commission finds that the carrier is transporting only the property of a person owning substantially all of the voting stock of the carrier. When an exemption is granted, the Commission shall issue a certificate of exemption. The Commission may begin a proceeding under this subsection on its own initiative or on application of an interested party.

[(2) The Commission may revoke an exemption granted under this subsection when it finds the water carrier is no longer entitled to the exemption. If the exemption is revoked, the Commission shall restore without further proceedings the authority the water carrier had to provide transportation subject to the jurisdiction of the Commission under this subchapter at the time the exemption became effective.

[SUBCHAPTER IV—FREIGHT FORWARDER SERVICE

[§ 10561. General jurisdiction

[(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over service that a household goods freight forwarder—

[(1) undertakes to provide; or

[(2) is authorized or required under this subtitle to provide; to the extent transportation is provided in the United States and is between—

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

[(B) a place in a State and another place in the same State through a place outside the State; or

[(C) a place in the United States and a place outside the United States.

[(b) The Commission does not have jurisdiction under subsection (a) of this section over service undertaken by a household goods freight forwarder using transportation—

[(1) of an air carrier subject to part A of subtitle VII of this title; or

[(2) by motor vehicle exempt under section 10526(a)(8) of this title.

[CHAPTER 107—RATES, TARIFFS, AND VALUATIONS

[SUBCHAPTER I—GENERAL AUTHORITY

[Sec.
[10701. Standards for rates, classifications, through routes, rules, and practices.
[10701a. Standards for rates for rail carriers.

[10702. Authority for carriers to establish rates, classifications, rules, and practices.
[10703. Authority for carriers to establish through routes.
[10704. Authority and criteria: rates, classifications, rules, and practices prescribed by Interstate Commerce Commission.
[10705. Authority: through routes, joint classifications, rates, and divisions prescribed by Interstate Commerce Commission.
[10705a. Joint rate surcharges and cancellations.
[10706. Rate agreements: exemption from antitrust laws.
[10707. Investigation and suspension of new rail carrier rates, classifications, rules, and practices.
[10707a. Zone of rail carrier rate flexibility.
[10708. Investigation and suspension of new nonrail carrier rates, classifications, rules, and practices.
[10709. Determination of market dominance in rail carrier rate proceedings.
[10710. Elimination of discrimination against recyclable materials.
[10711. Effect of certain sections on rail rates and practices.
[10712. Inflation-based rate increases.
[10713. Contracts.

[SUBCHAPTER II—SPECIAL CIRCUMSTANCES

[10721. Government traffic.
[10722. Special passenger rates.
[10723. Charitable purposes.
[10724. Emergency rates.
[10725. Special freight forwarder rates.
[10726. Long and short haul transportation.
[10728. Separate rates for distinct rail services.
[10730. Rates and liability based on value.
[10731. Investigation of discriminatory rail rates for transportation of recyclable or recycled materials.
[10732. Food and grocery transportation.
[10733. Rates for transportation of recyclable materials.
[10734. Car utilization.
[10734. Household goods rates—estimates; guarantees of service.

[SUBCHAPTER III—LIMITATIONS

[10741. Prohibitions against discrimination by common carriers.
[10742. Facilities for interchange of traffic.
[10743. Payment of rates.
[10744. Liability for payment of rates.
[10745. Continuous carriage of freight.
[10746. Transportation of commodities manufactured or produced by a rail carrier.
[10747. Transportation services or facilities furnished by shipper.
[10748. Transportation of livestock by rail carrier.
[10749. Exchange of services and limitation on use of common carriers by household goods freight forwarders.
[10750. Demurrage charges.
[10751. Business entertainment expenses.

[SUBCHAPTER IV—TARIFFS AND TRAFFIC

[10761. Transportation prohibited without tariff.
[10762. General tariff requirements.
[10763. Designation of certain routes by shippers or Interstate Commerce Commission.
[10764. Arrangements between carriers: copy to be filed with Interstate Commerce Commission.
[10765. Water transportation under arrangements with certain other carriers.
[10766. Freight forwarder traffic agreements.
[10767. Billing and collecting practices.

[SUBCHAPTER V—VALUATION OF PROPERTY

[10781. Investigation and report by Interstate Commerce Commission.
[10782. Requirements for establishing value.
[10783. Cooperation and assistance of carriers.
[10784. Revision of property valuations.

[10785. Finality of valuation: notice, protest, and review.
[10786. Applicability.

[SUBCHAPTER I—GENERAL AUTHORITY

[§ 10701. Standards for rates, classifications, through routes, rules, and practices

[(a) A rate (other than a rail rate), classification, rule, or practice related to transportation or service provided by a carrier subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title must be reasonable. A through route established by such a carrier (including a rail carrier) must be reasonable. Divisions of joint rates by those carriers (including rail carriers) must be made without unreasonable discrimination against a participating carrier and must be reasonable.

[(c) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title may not discriminate in its rates against a connecting line of another carrier providing transportation subject to the jurisdiction of the Commission under either of those subchapters or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

[(d) In a proceeding to determine whether a rate for transportation or service provided by a common carrier subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 of this title complies with subsection (a) of this section, the good will, earning power, or certificate or permit under which that carrier is operating may not be considered or admitted as evidence of the value of the property of that carrier. When the carrier receives a certificate or permit under chapter 109 of this title, it is considered to have agreed to this subsection for itself and for all transferees of that certificate or permit.

[(e) Except as provided in subsection (f), in proceedings to determine the reasonableness of rate levels for a motor carrier or group of motor carriers, or in proceedings to determine the reasonableness of a territorial rate structure where rates are proposed through agreements authorized by section 10706(b) of this title, the Commission shall authorize revenue levels that are adequate under honest, economical, and efficient management to cover total operating expenses, including the operation of leased equipment and depreciation, plus a reasonable profit. The standards and procedures adopted by the Commission under this subsection shall allow the carriers to achieve revenue levels that will 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, attract and retain capital in amounts adequate to provide a sound motor carrier transportation system in the United States, and take into account reasonable estimated or foreseeable future costs. Any complaint brought against a motor carrier (other than a carrier described in subsection (f)(1)(A)) by a person (other than a motor carrier) for unreasonably high rates for past or future transportation shall be determined under this subsection.

[(f) PROCEDURES FOR RESOLVING CLAIMS INVOLVING UNFILED, NEGOTIATED TRANSPORTATION 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 the jurisdiction of the Commission under subchapter II of chapter 105 of this title, 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 paragraph (2), (3), or (4) of this subsection, 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 subsection; 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 with the Commission 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 Commission 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.

If there is a dispute as to the showing under subparagraph (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 subparagraph (B), such dispute shall be resolved by the Commission. Pending the resolution of any such dispute, the person shall not have to pay any additional compensation to the carrier or freight forwarder. Satisfaction of the claim under paragraph (2), (3), or (4) of this subsection shall be binding on the parties, and the parties shall not be subject to chapter 119 of this title.

[(2) 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 Commission.

[(3) 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 Commission.

[(4) CLAIMS INVOLVING PUBLIC WAREHOUSEMEN.—Notwithstanding paragraphs (2) and (3), 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 Commission.

[(5) 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 paragraph (2), (3), or (4), the person may pursue all rights and remedies existing under this title.

[(6) 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 described in paragraph (1) 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 Commission 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.

[(7) LIMITATION ON STATUTORY CONSTRUCTION.—Except as authorized in paragraphs (2), (3), (4), and (9) of this subsection, nothing in this subsection shall relieve a motor common carrier of the duty to file and adhere to its rates, rules, and classifications as required in sections 10761 and 10762 of this title.

[(8) NOTIFICATION OF ELECTION.—

[(A) GENERAL RULE.—A person must notify the carrier or freight forwarder as to its election to proceed under paragraph (2), (3), or (4). Except as provided in subparagraphs (B), (C), and (D), such election may be made at any time.

[(B) DEMANDS FOR PAYMENT INITIALLY MADE AFTER DATE OF ENACTMENT.—If the carrier or freight forwarder or party representing such carrier or freight forwarder initially demands the payment of additional freight charges after the date of the enactment of this subsection and notifies the person from whom additional freight charges are sought of the provisions of paragraphs (1) through (7) at the time of the making of such initial demand, the election must be made not later than the later of—

[(i) 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

[(ii) the 90th day following the date of the enactment of this subsection.

[(C) PENDING SUITS FOR COLLECTION MADE BEFORE OR ON DATE OF ENACTMENT.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has filed, before or on the date of the enactment of this subsection, a suit for the collection of additional freight charges and notifies the person from whom additional freight charges are sought of the provisions of paragraphs (1) through (7), the election must be made not later than the 90th day following the date on which such notification is received.

[(D) DEMANDS FOR PAYMENT MADE BEFORE OR ON DATE OF ENACTMENT.—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 or on the date of the enactment of this subsection and notifies the person from whom additional freight charges are sought of the provisions of paragraphs (1) through (7), the election must be made not later than the later of—

[(i) 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

[(ii) the 90th day following the date of the enactment of this subsection.

[(9) CLAIMS INVOLVING SMALL-BUSINESS CONCERNS, CHARITABLE ORGANIZATIONS, AND RECYCLABLE MATERIALS.—Notwithstanding paragraphs (2), (3), and (4), 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, as defined in section 10733.a

[§ 10701a. Standards for rates for rail carriers

[(a) Except as provided in subsection (b) or (c) of this section and unless a rate is prohibited by a provision of this title, a rail carrier providing transporation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may establish any rate for transportation or other service provided by the carrier.

[(b)(1) If the Commission determines, under section 10709 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 any proceeding to determine the reasonableness of a rate described in paragraph (1) of this subsection—

[(A) the shipper challenging such rate shall have the burden of proving that such rate is not reasonable if—

[(i) such rate (I) is authorized under section 10707a of this title, and (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is less than the lesser of the percentages described in clauses (i) and (ii) of section 10707a(e)(2)(A) of this title; or

[(ii) such rate does not meet the description set forth in clause (i) of this subparagraph, but the Commission does not begin an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable; and

[(B) the rail carrier establishing the challenged rate shall have the burden of proving that such rate is reasonable if—

[(i) such rate (I) is greater than that authorized under section 10707a of this title, or (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the lesser of the percentages described in clauses (i) and (ii) of section 10707a(e)(2)(A) of this title; and

[(ii) the Commission begins an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable.

[(3) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Commission shall recognize the policy of this subtitle that rail carriers shall earn adequate revenues, as established by the Commission under section 10704(a)(2) of this title.

[(c)(1) A rate for transportation or other service provided by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may not be established below a reasonable minimum. Any rate for transportation by such a rail carrier that does not contribute to the going concern value of such carrier is presumed to be not reasonable. A rate that contributes to the going concern value of such carrier is conclusively presumed not to be below a reasonable minimum.

[(2) A rate for transportation by a rail carrier that equals or exceeds the variable cost of providing the transportation is conclusively presumed to contribute to the going concern value of such rail carrier.

[(3)(A) Upon the filing of a complaint alleging that a rate is in violation of this subsection, the Commission shall take final action thereon by the 90th day after the date such complaint is filed.

[(B) If the Commission determines, based on the record after opportunity for a hearing, that a rate is in violation of this subsection, the Commission shall order such rate to be raised, but only to the minimum level required by this subsection. The complainant shall have the burden of proving that such rate is in violation of this subsection.

[(4)(A) For purposes of this subsection, variable costs shall be determined under formulas or procedures prescribed or certified by the Commission.

[(B) In the determination of variable costs for purposes of minimum rate regulation, the Commission shall, on application of the

rail carrier proposing the rate, determine only the costs of such carrier and only those costs of the specific service in question unless the specific information is not available. The Commission may not include in such variable costs an expense that does not vary directly with the level of transportation provided under the proposed rate.

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

[(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall establish—

[(1) rates, including divisions of joint rates, and classifications for transportation and service it may provide under this subtitle; and

[(2) rules and practices on matters related to that transportation or service, including rules and practices on—

[(A) issuing tickets, receipts, bills of lading, and manifests;

[(B) carrying of baggage;

[(C) the manner and method of presenting, marking, packing, and delivering property for transportation; and

[(D) facilities for transportation.

[(b) A contract carrier, except a motor contract carrier of property, providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title shall establish, and file with the Commission, actual and minimum rates for the transportation it may provide under this subtitle and rules and practices related to those rates. However, this subsection does not require a motor contract carrier to maintain the same rates and rules related to those rates for the same transportation provided to shippers served by it. The Commission may grant relief from this subsection when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers or on its own initiative for a water contract carrier or group of water contract carriers.

[(c) CONTRACTS OF CARRIAGE FOR MOTOR CONTRACT CARRIERS.—

[(1) GENERAL RULE.—A motor contract carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall enter into a written agreement, separate from the bill of lading or receipt, for each contract for the provision of transportation subject to such jurisdiction which is entered into after the 90th day following the date of the enactment of this subsection.

[(2) MINIMUM CONTENT REQUIREMENTS.—The written agreement shall, at a minimum—

[(A) identify the parties thereto;

[(B) commit the shipper to tender and the carrier to transport a series of shipments;

[(C) contain the contract rate or rates for the transportation service to be or being provided; and

[(D)(i) state that it provides for the assignment of motor vehicles for a continuing period of time for the exclusive use of the shipper; or

[(ii) state that it provides that the service is designed to meet the distinct needs of the shipper.

[(3) RETENTION BY CARRIER.—All written agreements entered into by a motor contract carrier under paragraph (1) shall be retained by the carrier while in effect and for a minimum period of 3 years thereafter and shall be made available to the Commission upon request.

[(4) RANDOM AUDITS BY COMMISSION.—The Commission shall conduct periodic random audits to ensure that motor contract carriers are complying with this subsection and are adhering to the rates set forth in their agreements.

[§ 10703. Authority for carriers to establish through routes

[(a) A carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall establish through routes as follows:

[(1) Rail, express, sleeping car, and pipeline carriers shall establish through routes with each other and shall establish rates and classifications applicable to those routes.

[(2) Rail and water common carriers shall establish through routes with each other and shall establish rates and classifications applicable to those routes.

[(3) A motor common carrier of passengers shall establish through routes with other carriers of the same type and shall establish individual and joint rates applicable to them.

[(4)(A) A motor common carrier of property may establish through routes and joint rates and classifications applicable to them with other carriers of the same type, with rail and express carriers, and with water common carriers, including those referred to in subparagraph (D) of this paragraph.

[(B) A motor common carrier of passengers may establish through routes and joint rates applicable to them with rail carriers or water common carriers, including those referred to in subparagraph (D) of this paragraph, or both.

[(C) Water common carriers shall establish through routes with each other and shall establish rates and classifications applicable to those routes and may establish—

[(i) through routes and rates and classifications applicable to them with motor common carriers; and

[(ii) through routes and joint rates and classifications applicable to them with water common carriers referred to in subparagraph (D)(ii) of this paragraph.

[(D) A through route or joint rate or classification authorized to be established with a carrier referred to in this subparagraph may be established with a water common carrier providing transportation subject to—

[(i) the jurisdiction of the Commission under subchapter III of chapter 105 of this title; or

[(ii) section 1 of the Shipping Act, 1916 (46 App. U.S.C. 801) or the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et. seq.) (including persons holding themselves

out to transport goods by water but not owning or operating vessels) and providing transportation of property between Alaska or Hawaii and the other 48 States.

A through route and a rate, classification, rule, or practice related to a through route with a water common carrier referred to in this subparagraph is subject to the provisions of this subtitle governing the type of carrier establishing the rate, classification, rule, or practice.

[(E) A household goods freight forwarder may enter into contracts with a rail carrier or with a water common carrier providing transportation subject to the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.) or the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.). Not later than 180 days after the date of enactment of this subparagraph, the Commission shall promulgate regulations implementing the provisions of this subparagraph.

[(b) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title that establishes a through route with another carrier under this section shall establish rules for its 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 Interstate Commerce Commission

[(a)(1) When the Interstate Commerce Commission, after a full hearing, decides that a rate charged or collected by a carrier for transportation subject to the jurisdiction of the Commission under subchapter I, II (insofar as motor carriers of property are concerned), of chapter 105 of this title, or that a classification, rule, or practice of that carrier, does or will violate this subtitle, the Commission may prescribe the rate (including a maximum or minimum rate, or both), classification, rule, or practice to be followed. The Commission 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 Commission.

[(2) The Commission shall maintain and revise as necessary standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under that subchapter 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 Commission shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. However, a rate, classification, rule, or practice of a rail carrier may be maintained at a particular level to protect the traffic of another carrier or mode of transportation only if the Commission finds that the rate or classification, or rule or practice related to it, reduces or would reduce the going concern value of the carrier

charging the rate. 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) The Commission shall conclude a proceeding under paragraph (2) of this subsection within 180 days after the effective date of the Staggers Rail Act of 1980 and thereafter as necessary.

[(4) On the basis of the standards and procedures under paragraph (2) of this subsection, the Commission shall, within 180 days after the effective date of the Staggers Rail Act of 1980 and on an annual basis thereafter, determine which rail carriers are earning adequate revenues.

[(b)(1) When the Commission decides that a rate charged or collected by—

[(A) a motor common carrier for providing transportation subject to its jurisdiction under subchapter II of chapter 105 of this title by itself, with another motor common carrier, with a rail, express, or water common carrier, or any of them;

[(B) a water common carrier for providing transportation subject to its jurisdiction under subchapter III of chapter 105 of this title; or

[(C) a household goods freight forwarder for providing service subject to its jurisdiction under subchapter IV of chapter 105 of this title;

or that a classification, rule, or practice of that carrier, does or will violate this chapter, the Commission shall prescribe the rate (including a maximum or minimum rate, or both), classification, rule, or practice to be followed.

[(2)(A) When prescribing a rate, classification, rule, or practice for transportation or service by common carriers other than by rail carrier, the Commission shall consider, among other factors, the effect of the prescribed rate, classification, rule, or practice on the movement of traffic by that carrier.

[(B) When prescribing a rate, classification, rule, or practice for transportation or service by common carriers other than by rail carrier or motor carrier, the Commission shall consider, among other factors, the need for revenues that are sufficient, under honest, economical, and efficient management, to let the carrier provide that transportation or service.

[(3) If the carrier is a motor or water common carrier or a household goods freight forwarder, the Commission shall also consider the need, in the public interest, of adequate and efficient transportation or service by that carrier at the lowest costs consistent with providing that transportation or service.

[(4) If the carrier is a motor common carrier or a household goods freight forwarder, the Commission shall also consider the inherent advantages of transportation by motor common carrier or the inherent nature of household goods freight forwarding, respectively.

[(c)(1) When the Commission finds that a minimum rate of a contract carrier for transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title, or a rule or practice related to the rate or the value of the service under it, violates this chapter or the transportation policy of section 10101 of this title, the Commission may prescribe the minimum rate, rule, or practice for the carrier that is desirable in the public interest and will promote that policy. In prescribing the rate, the Commission may not give a motor or water contract carrier an advantage or preference in competition with a motor or water common carrier, respectively, if an advantage or preference is unreasonable or inconsistent with the public interest and the transportation policy of section 10101 of this title.

[(2) When prescribing a minimum rate, or rule or practice related to a rate, for a contract carrier, the Commission shall consider—

[(A) the cost of the transportation provided by the carrier; and

[(B) the effect of a prescribed minimum rate, or rule or practice, on the movement of traffic by that carrier.

[(d) In a proceeding involving competition between carriers of different modes of transportation subject to this subtitle, except rail carriers, the Commission, in determining whether a rate is less than a reasonable minimum rate, shall consider the facts and circumstances involved in moving the traffic by the mode of carrier to which the rate is applicable. Subject to the transportation policy of section 10101 of this title, rates of a carrier may not be maintained at a particular level to protect the traffic of another mode of transportation.

[(e) In a proceeding involving a proposed increase or decrease in rail carrier rates, the Commission shall specifically consider allegations that the increase or decrease would (1) change the rate relationships between commodities, ports, places, regions, areas, or other particular descriptions of traffic (without regard to previous Commission consideration or approval of those relationships), and (2) have a significant adverse effect on the competitive position of shippers or consignees served by the rail carrier proposing the increase or decrease. The Commission shall investigate to determine whether the change or effect violates this subtitle when it finds that those allegations are substantially supported on the record. The investigation may be made either before or after the proposed increase or decrease becomes effective and either in that proceeding or in another proceeding.

[(f) The Commission may begin a proceeding under this section on its own initiative or 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 Commission. A complaint under subsection (c) of this section must contain a full statement of the facts and the reasons for the complaint and must be made under oath.

[§ 10705. Authority: through routes, joint classifications, rates, and divisions prescribed by Interstate Commerce Commission

[(a)(1) The Interstate Commerce Commission may, and shall when it considers it desirable in the public interest, prescribe through routes, joint classifications, joint rates (including maximum or minimum rates or both), the division of joint rates, and the conditions under which those routes must be operated, for a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II (except a motor common carrier of property), or III of chapter 105 of this title. When one of the carriers on a through route is a water carrier, the Commission shall prescribe a differential between an all-rail rate and a joint rate related to the water carrier if the differential is justified.

[(2) The Commission 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 10741–10744 or 11103 of this title;

[(B) one of the carriers is a water carrier;

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

[(D) the Commission decides that the proposed through route is needed to provide adequate, and more efficient or economic, transportation.

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

[(3) The Commission may not prescribe—

[(A) a through route, classification, practice, or rate between a street electric passenger railway not engaged in the general business of transporting freight in addition to its passenger and express business and (i) a rail carrier of a different character, or (ii) a water common carrier; or

[(B) a through route or joint rate applicable to it to assist a participating carrier to meet its financial needs.

[(b)(1) The Interstate Commerce Commission may, and shall when it considers it desirable in the public interest, prescribe through routes, joint classifications, joint rates (including maximum or minimum rates or both), the division of joint rates, and the conditions under which those routes must be operated, for a motor common carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title with another such carrier or with a water common carrier of property.

[(2) The Commission may not require a motor common carrier of property, without its consent, to include in a through route substantially less than the entire length of its route and the route of any intermediate carrier which is operated in conjunction and under common management or control with such motor common carrier of property which lies between the termini of such proposed

through routes (A) unless inclusion of such routes would make the through route unreasonably circuitous as compared with another practicable through route which could otherwise be established, or (B) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, more efficient, or more economic transportation. In prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the preceding sentence, give reasonable preference to the carrier which originates the traffic.

[(c) The Commission shall prescribe the division of joint rates to be received by a carrier providing transportation subject to its jurisdiction under chapter 105 of this title 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 Commission under subsection (a) or (b) of this section, does or will violate section 10701 of this title. When prescribing the division of joint rates of a rail carrier, water carrier, or motor common carrier of property under this subsection, the Commission shall consider—

[(1) the efficiency with which the carriers concerned are operated;

[(2) the amount of revenue required by the carriers to pay their operating expenses and taxes and receive a fair return on the property held and used for transportation;

[(3) the importance of the transportation to the public;

[(4) whether a particular participating carrier is an originating, intermediate, or delivering line; and

[(5) other circumstances that ordinarily, without regard to the mileage traveled, entitle one carrier to a different proportion of a rate than another carrier.

[(d) If a division of a joint rate prescribed under a decision of the Commission is later found to violate section 10701 of this title, the Commission 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 Commission decides is justified. The Commission may make a decision under this paragraph effective as part of its original decision.

[(e) When the Commission suspends, for investigation, a rail or water common carrier tariff that would cancel a through route, joint rate, or classification without the consent of all carriers that are parties to it or without authorization of the Commission, the carrier proposing the cancellation has the burden of proving that cancellation is consistent with the public interest without regard to subsection (a)(2) of this section. In determining whether a cancellation involving a rail carrier is consistent with the public interest, the Commission shall, to the extent applicable—

[(1) compare the distance traveled and the average transportation time and expense required using (A) the through route, and (B) alternative routes, between the places served by the through route;

[(2) consider any reduction in energy consumption that may result from cancellation; and

[(3) consider the overall impact of cancellation on the shippers and carriers that are affected by it.

[(f)(1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take final action by the 180th day after completion of the evidentiary proceedings, except that—

[(A) when the proceeding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

[(B) in all cases other than those specified in subparagraph (A) of this subparagraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this clause, it must report its reasons to Congress.

[(2) When a carrier begins a proceeding to adjust the division of joint rates for transportation by a rail carrier under this section by filing a complaint with the Commission, the carrier must also file all of the evidence in support of its position with the complaint and, during the course of the proceeding may only file rebuttal or reply evidence unless otherwise ordered by the Commission.

[(3) When the Commission receives a notice of intent to begin a proceeding to adjust the division of joint rates for transportation by a rail carrier under this section, the Commission shall allow the party filing the notice the same right to discovery that a party would have on filing a complaint under this section.

[(g) When there is a shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may prescribe temporary through routes that are desirable in the public interest on its own initiative or on application without regard to subsection (f) of this section, subchapter II of chapter 103 of this title, and subchapter II of chapter 5 of title 5.

[(h) Any motor common carrier of property who is a party to a through route and joint rate, whether established by such carrier under section 10703 of this title or prescribed by the Commission under subsection (b) of this section, shall promptly pay divisions or make interline settlements, as the case may be, with other carriers which are parties to such through route and joint rate. In the event of undue delinquency in the settlement of such divisions or interline settlements, such through routes and joint rates may be suspended or canceled under rules prescribed by the Commission.

[§ 10705a. Joint rate surcharges and cancellations

[(a)(1)(A) Except as provided in subparagraph (B) of this paragraph, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may publish and apply a surcharge increasing or decreasing the through charge applicable to any move-

ment between points designated by the surcharging carrier subject to a joint rate. Such a surcharge may be applied without the concurrence of the other carriers that are party in such joint rate.

[(B) A carrier earning adequate revenues, as determined under section 10704(a)(2) of this title, may not apply such a surcharge to any movement on a line operated by such carrier which carried more than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year.

[(C) Any surcharge applied pursuant to this subsection must be applied in equal dollar amounts to the movement subject to the surcharge over all routes between the points designated by the surcharging carrier which such carrier participates in under the joint rate involved, and when the surcharge increases the through charges, under any of such carriers single line rates between the same points.

[(2)(A) Whenever a rail carrier applies a surcharge increasing a through charge pursuant to paragraph (1) of this subsection, any other rail carrier that participates in any movement subject to such surcharge may cancel the application of such surcharge to any route participated in by such other carrier, if such carrier makes the demonstration described in subparagraph (B) of this paragraph.

[(B) A rail carrier may cancel the application of a surcharge under this paragraph if such carrier demonstrates to the Commission that the surcharging carrier's share of the revenues, at the time the surcharge was filed with the Commission, from its participation in the movement over the route involved would have been equal to or greater than 110 percent of its variable cost of providing service over such route, under either—

[(i) the applicable joint rate in effect at the time the surcharge was filed with the Commission, without the surcharge;

[(ii) a new rate division increasing the share of the surcharging carrier;

[(iii) a new higher lawful rate published by the canceling carrier; or

[(iv) a new, lesser surcharge which shall be prescribed by the Commission upon and in conformity with the request of the carrier proposing to cancel the surcharge. Any such prescribed surcharge shall in conjunction with the surcharging carrier's division of the joint rate in effect on the date the original surcharge was filed with the Commission, provide the carrier proposing the original surcharge revenues equal to or greater than 110 percent of such surcharging carrier's variable cost of providing service over such route.

[(C)(i) The canceling tariff shall only become effective if the rail carrier proposing to cancel the application of the surcharge makes the demonstration described in subparagraph (B) of this paragraph.

[(ii) If the demonstration described in clause (i) of this subparagraph is made on the basis of the applicable joint rate in effect at the time the surcharge was filed with the Commission, without the surcharge, the tariff shall become effective on one day's notice after such determination is made.

[(iii) If the demonstration described in clause (i) of this subparagraph is made on the basis of a new rate, division, or surcharge prescribed pursuant to subpargraph (B)(iv) of this paragraph, the

tariff shall become effective on the date such new rate, division, or surcharge becomes effective.

[(D) The remedy available to a rail carrier canceling the application of a surcharge under this paragraph shall be in addition to any other remedy available to such carrier under this chapter.

[(3)(A) The Commission may cancel the application of a surcharge to a route to which such surcharge applies if a shipper moving traffic over such route demonstrates to the Commission that—

[(i) there is no competitive alternative to such route for the movement of the traffic involved that is not subject to such surcharge; and

[(ii) the surcharging carrier's share of the revenues from its participation in the movement over the route to which such surcharge applies, under the applicable joint rate in effect at the time the surcharge was filed with the Commission, with the surcharge, would be greater than 110 percent of its variable cost of providing service over such route.

[(B) If the Commission cancels the application of a surcharge to a particular route pursuant to subparagraph (A) of this paragraph, the Commission shall determine the level of surcharge which, in conjunction with the surcharging carrier's division of the joint rate in effect at the time the surcharge was filed with the Commission, would equal 110 percent of the surcharging carrier's variable cost of providing service over such route, and shall authorize such carrier immediately to apply such a surcharge without any further proceedings under this subsection.

[(4) A rail carrier may not apply a surcharge under this subsection unless, for the one-year period preceding the surcharge, such carrier has concurred in all rate increases of general applicability applicable to the joint rate to which such surcharge applies and agreed to by all other carriers that are party to such joint rate.

[(5) A rail carrier may not apply a surcharge under this subsection increasing a through charge applicable to a particular movement more than once each calendar year.

[(6) Notwithstanding any other provision of this subsection, a rail carrier may, by tariff, reduce the total charges applicable to a movement over any specific joint line or single line route or routes in which such carrier participates, if such reduction does not lower the total charges applicable to such movement to a level that is less than the lowest total charges applicable to the same movement over a competing route. Any such reduction may be made without the concurrence of any other rail carrier, and shall be borne solely by the carrier reducing the charge. Nothing in this paragraph shall be construed to limit the right of a carrier to reduce rates over routes not in direct competition between the same points with routes to which it has applied a surcharge.

[(b)(1) Notwithstanding subsection (a) of this section—

[(A) a rail carrier not earning adequate revenues, as determined under section 10704(a)(2) of this title, may publish and apply a surcharge applicable to traffic originating or terminating upon any of its lines that carried less than 3,000,000 gross ton miles of traffic per mile in the most recent calendar year for which traffic data is available; and

[(B) a rail carrier earning adequate revenues, as so determined, may publish and apply a surcharge applicable to traffic originating or terminating upon any of its lines that carried less than 1,000,000 gross ton miles of traffic per mile in such most recent calendar year.

Such a surcharge may be applied without the concurrence of any rail carrier. Any such surcharge may be allocated, subject to the provisions of paragraph (4) of this subsection, in different amounts among different movements between different origins and destinations, and shall accrue solely to the surcharging carrier.

[(2) A rail carrier may apply a surcharge under this subsection if, prior to the application of such surcharge, that portion of the charges applicable to traffic to and from the line to which the surcharge applies and accruing to the surcharging carrier does not provide such carrier revenues adequate to cover—

[(A) 110 percent of such carrier's variable cost of transporting the traffic involved to or from such line; plus

[(B) 100 percent of such carrier's reasonably expected costs of continuing to operate such line, which shall include all costs necessary to sustain service on the line.

The Commission shall, within 120 days after the effective date of the Staggers Rail Act of 1980, complete a proceeding to define the term "reasonably expected costs" as used in subparagraph (B) of this paragraph. In the interim, the term shall be construed in accordance with Rail Services Planning Office subsidy standards.

[(3)(A) Upon petition of a shipper located upon a line to which a surcharge under this subsection is applied, the Commission may cancel the application of a surcharge under this subsection if such shipper demonstrates to the Commission that, after application of the surcharge, the surcharging carrier's revenues from all traffic originating or terminating upon the line to which the surcharge applies exceed 110 percent of such carrier's variable cost of transporting all traffic to or from such line plus such carrier's reasonably expected costs of continuing to operate such line.

[(B)(i) A rail carrier's revenue from all traffic originating or terminating upon a line shall be presumed to exceed 110 percent of its variable cost of transporting all traffic to or from such line plus its reasonably expected costs of continuing to operate such line if the complaining shipper demonstrates that the carrier is earning revenues from all traffic originating or terminating upon such line that result in a revenue-variable cost percentage that is equal to or greater than the revenue-variable cost percentage applicable in that year under section 10709(d) of this title.

[(ii) A surcharging carrier may rebut the presumption set forth in clause (i) of this subparagraph by demonstrating to the Commission that its reasonably expected costs for operating the line to which the surcharge applies exceed the percentage of variable cost set forth in such clause (i).

[(C) Upon a finding by the Commission that application of the surcharge will produce revenues in excess of 110 percent of the surcharging carrier's variable cost of transporting traffic to or from the line plus its reasonably expected costs of operating the line, the Commission shall determine the level of surcharge which would produce revenues equal to such figure and shall authorize such car-

rier immediately to apply such surcharges as will generate such revenues without any further proceedings, subject only to the right of a shipper to proceed under paragraph (4) of this subsection.

[(4)(A) A rail carrier may not apply a surcharge under this subsection that results in any shipper being required to bear more than a reasonable proportion of the reasonably expected costs of continuing to operate the line to which such surcharge applies.

[(B) Upon complaint of a shipper, the Commission shall determine whether the shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph.

[(C) If the Commission finds that a complaining shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph, the Commission may reallocate the surcharge among the traffic originating or terminating on the line to which the surcharge applies, but may not order relief which would result in the surcharging carrier earning revenues less than those which the carrier would have earned had the surcharge been applied as filed.

[(5) A shipper may, in a single complaint, seek relief under paragraphs (3) and (4) of this subsection. In any such complaint, the Commission shall first determine the right to relief under paragraph (3) and shall grant such relief as is appropriate under such paragraph.

[(6) In any proceeding brought before the Commission challenging the application or amount of a surcharge under this subsection, whether the surcharge is claimed to violate this subsection or some other provision of this chapter, the Commission shall not suspend the application of any such surcharge unless the person filing the verified statement required by section 10707(c) of this title, in addition to the matters required by such section, also makes the demonstration required by paragraph (3)(A) of this subsection. If the demonstration required by such paragraph (3)(A) is made, the Commission may suspend the application of only so much of the surcharge as will produce revenues in excess of the amount so demonstrated.

[(c)(1) Notwithstanding any other provision of this title, any prior agreement in effect on the effective date of the Staggers Rail Act of 1980, or any requirement of the Commission, a rail carrier may cancel the application of a joint rate to a through route in which it participates, without the concurrence of any other rail carrier that is a party to such joint rate, unless another rail carrier that participates in such through route or a shipper that has no competitive alternative to such route makes the demonstration described in paragraph (2) of this subsection.

[(2) The application of a joint rate to a through route may not be canceled under this subsection if a rail carrier that participates in such through route or a shipper that has no competition alternative to such route from an origin or destination served by such route demonstrates to the Commission that the canceling carrier's share of the revenues, under the joint rate in effect at the time the application of the joint rate is canceled, is equal to or greater than—

[(A) 110 percent of the canceling carrier's variable cost of providing service over such route; or

[(B) such lesser percent of the canceling carrier's variable cost as such carrier earns over a competing through route to which application of the joint rate has not been canceled, or over a competing single line route.

[(3) When a complaining party is unable to make the demonstration required by paragraph (2) of this subsection, the Commission may suspend the tariff canceling the joint rate only if—

[(A) a complaining carrier publishes a new rate division or a new higher lawful rate which increases the canceling carrier's share of the revenues over such route to the amount calculated under paragraph (2)(A) or (2)(B) of this subsection, whichever is less; or

[(B) a complaining carrier or shipper petitions the Commission and the Commission imposes a surcharge, in conformity with such petition, upon the joint rate which will accrue solely to the canceling carrier and which, in conjunction with the canceling carrier's division of the joint rate in effect on the date the tariff canceling the joint rate was filed, will provide the canceling carrier revenues equal to or greater than 110 percent of its variable cost of providing service over such route.

Unless a new rate, division, or surcharge described in this paragraph becomes effective within 120 days after the proposed effective date of the rate cancellation, the canceling tariff shall, nevertheless, become effective.

[(4) If the demonstration described in paragraph (2) is made or a new rate, division, or surcharge described in paragraph (3) becomes effective, the tariff canceling the joint rate shall be considered by the Commission in accordance with section 10705 of this title. The existing joint rate or the new rate, division, or surcharge, shall remain in effect during the pendency of the Commission's consideration.

[(5) Whenever the application of a joint rate to a through route is canceled under this subsection and a rate other than a joint rate is or has been published by the canceling carrier to apply to such route, such rate shall thereafter apply in lieu of all other rates (except joint rates subsequently agreed to by such carrier) and any through rate of which such rate is a factor shall divide as the separate factors of such rate are made.

[(6) Nothing in this subsection shall be construed to limit the authority of the Commission under section 10705(a) of this title to prescribe joint rates which provide a rail carrier participating in such joint rate revenues equal to or greater than 110 percent of its variable cost of providing service over each route to which such rate applies.

[(d)(1) Except as provided in paragraph (2) of this subsection, any increase or decrease in revenue resulting from the application of a surcharge under subsection (a) of this section, or from the cancellation of the application of a joint rate under subsection (c) of this section, shall accrue solely to or be borne solely by the carrier applying the surcharge or canceling the application of the joint rate, as the case may be.

[(2) Whenever a class III rail carrier which participates in a through route to which a surcharge has been applied under subsection (a) of this section by a carrier operating in the same rate territory as such class III carrier demonstrates to the Commission that the application of such surcharge to such route provides, in the absence of any increase in the joint rate in effect on the date the surcharge was filed with the Commission, revenues from traffic moving over such route to such surcharging carrier in excess of 110 percent of its variable costs over such route, such surcharging carrier shall, from the date of such demonstration, share those revenues from such route, from the surcharge and the applicable joint rate in effect on the date the surcharge was filed with the Commission, in excess of 110 percent of its variable costs with all class III rail carriers in the same rate territory participating in such route, on the basis of their existing divisions of the joint rate to which the surcharge applies.

[(e)(1) Except as provided in paragraph (2) of this subsection, whenever a rail carrier proposes to apply a surcharge under subsection (a) of this section or to cancel the application of a joint rate under subsection (c) of this section and other rail carrier subsequently agrees to a new rate division or a new lawful rate that increases the surcharging or canceling carrier's share of the total through charges for a movement over a particular through route subject to a joint rate, such other rail carrier shall also agree to any other new rate division and new lawful rate—

[(A) that is proposed within 120 days after the date of the first agreement; and

[(B) that increases the surcharging or canceling carrier's share of the total through charges for movements over a competing through route subject to such joint rate.

[(2) A rail carrier shall not be required to agree under this subsection to any proposed new division or new rate which would—

[(A) reduce such carrier's share of the total through charges for a movement over any through route to less than (i) 110 percent of its variable costs of providing service over such route, or (ii) such lesser percent of its variable costs as such carrier earns from such movement over a competing through route with respect to which such carrier has agreed to a new division or rate;

[(B) increase the surcharging or canceling carrier's share of the total through charges for a movement over any through route to an amount in excess of 110 percent of its variable costs of providing service over such route;

[(C) reduce such carrier's share of the total through charges for a movement over any through route by a dollar amount in excess of the greatest dollar reduction which such carrier has agreed to make, for purposes of increasing the surcharging or canceling carrier's share, to its share of the total through charges for a movement over any competing through route; or

[(D) reduce such carrier's share of the total through charges for a movement over any through route in an amount in excess of such carrier's pro rata share (based on established divisions for movements over such route) of the increase of the surcharg-

ing or canceling carrier's share of the total through charges for movements over such route.

[(f) A rail carrier applying a surcharge or canceling the application of a joint rate under this section shall file a tariff with the Commission in accordance with section 10762 of this title. Such a tariff may not become effective until the expiration of the 45-day period (or such longer period as the filing carrier specifies) beginning on the date such tariff is filed.

[(g)(1) Any rail rate to which a surcharge is applied under this section shall be subject to section 10701a and 10709 of this title, and any such surcharge shall constitute a rate increase for purposes of such sections.

[(2) For purposes of rate regulation under section 10701a of this title—

[(A) only the rail carrier proposing a surcharge under this section shall be required to defend such surcharge; and

[(B) the reasonableness of the surcharge and the revenues received by the rail carrier proposing the surcharge under the joint rate to which the surcharge applies shall be determined without regard to amount received and services performed by other rail carriers that are party to such joint rate.

[(3) Except as provided in subsection (i), (j), or (k) of this section, if the application of a surcharge or the cancellation of the application of a joint rate under this section is found to constitute a violation of any provision of this subtitle, such violation shall not be ordered remedied in any manner which—

[(A) requires the carrier applying a surcharge under subsection (a) of this section or canceling the application of a joint rate under subsection (c) of this section to provide service over any route under a rate that provides revenues to such carrier that are less than 110 percent of its variable costs of providing such service; or

[(B) which requires the carrier applying a surcharge under subsection (b) of this section to provide service over the route to which such surcharge applies in a manner that provides revenues to such carrier that are less than 110 percent of such carrier's variable cost of transporting the traffic involved to or from the line to which the surcharge applies, plus such carrier's reasonably expected costs of providing service over such line.

[(h) Within 5 days after the request of a rail carrier participating in a joint rate subject to a surcharge or cancellation under this section, a shipper moving traffic over a route to which such surcharge or cancellation applies, or an affected port, the Commission shall make available to such carrier, shipper, or port the Commission's determination of the variable costs and revenues, over the route or routes to which the surcharge or cancellation applies, of the carrier applying the surcharge or canceling the application of the joint rate.

[(i)(1) Whenever a class III rail carrier, in a protest filed with the Commission, makes a prima facie showing that the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section will have an adverse effect on competition, the Commission

shall investigate such protest. If, on the basis of such investigation, the Commission finds that the protested surcharge or cancellation is or is intended to be anticompetitive, the Commission shall, within 30 days after the date such protest is filed, enter an order rescinding such surcharge or cancellation, and may, on presentation of an adequate record, prescribe new joint rates or divisions of joint rates.

[(2) No order prescribed under this subsection shall require a carrier to provide service over any route under a rate which provides revenues less than 110 percent of the variable cost of providing such service unless the Commission determines that the public interest requires a lesser revenue to variable cost ratio to avoid anticompetitive action and to preserve service on the route involved.

[(j)(1) Any class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section may protest such surcharge or cancellation whenever—

[(A) such surcharge or cancellation affects the sole remaining route available to that carrier for that traffic; and

[(B)(i) such carrier demonstrates that alternative transportation is available or that a shipper dependent on that carrier will suffer significant market loss because of such surcharge or cancellation; or

[(ii) such surcharge or cancellation, alone or when considered in conjunction with other surcharges or cancellations affecting the carrier, is likely to unduly impair a carrier's ability to earn an adequate rate of return.

[(2)(A) The Commission may, after an investigation on the basis of a protest under this subsection, prescribe a lesser surcharge or a different division of the joint rate. The Commission shall grant the surcharging or canceling carrier revenues not less than 110 percent of its variable cost of the movement involved, unless it determines that the public interest requires a lesser revenue to available cost ratio to preserve service on the route involved. Any action by the Commission based on a protest under this subsection shall be taken within 30 days after the date such protest is filed.

[(B) If the Commission prescribes a different division of a joint rate under this paragraph, the Commission shall, upon petition of the surcharging or canceling carrier or the protesting class III rail carrier, reopen the proceeding in which such division was prescribed to reconsider whether such prescribed division is reasonable. If, on the basis of such reconsideration, the Commission determines that such division is not reasonable, it shall prescribe a new, reasonable division of the joint rate to which the surcharge or cancellation applied.

[(k)(1) Upon the complaint of a class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section that such surcharge or cancellation will result in differences or greater differences in rates, including any surcharges, for the traffic to which

the surcharge or cancellation applies over different routes in which the surcharging or canceling carrier participates—

[(A) from a single origin point to destination points within a 75 mile direct radius from the destination point on such class III rail carrier; or

[(B) to a single destination point from origin points within a 75 mile direct radius from the origin point on such class III rail carrier,

the Commission shall investigate such complaint and shall, within 30 days after the date such complaint is filed, take such actions, including rescinding surcharges or cancellations or prescribing new joint rates or surcharges, as it determines are required to eliminate such differences in rates, unless it finds that such actions are not warranted by the public interest in ensuring effective competition among rail carriers or in the preservation of rail service on the route involved.

[(2) No action taken by the Commission under this subsection shall require a carrier to provide service over any route under a rate which provides a revenue to variable cost ratio over such route less than that provided under the joint rate to which the surcharge or cancellation was applied or less than 110 percent, whichever is greater, unless the Commission determines that the public interest in ensuring effective competition among rail carriers or in preserving service over such route warrants requiring the surcharging or canceling carrier to provide service at a lesser revenue to variable cost ratio.

[(3) Notwithstanding subsection (m)(1) of this section, if in a proceeding under this subsection or under subsection (i) or (j) of this section, the Commission considers whether to require the revenues of a carrier applying a surcharge under subsection (a) of this section or canceling the application of a joint rate under subsection (c) of this section to be less than 110 percent of its variable costs (as calculated using the Commission's Rail Form A cost finding methodology), such surcharging or canceling carrier may prove its actual variable costs on the basis of evidence other than unadjusted costs calculated using such Rail Form A cost finding methodology. Such evidence shall be prepared in accordance with generally accepted accounting principles.

[(l) Whenever the application of a joint rate to a through route is canceled under subsection (c) of this section, the Commission shall, upon petition by a class II or III rail carrier participating in such route, prescribe a new compensatory through rate or rates over such route within 30 days after the date such petition is filed.

[(m) For purposes of this section—

[(1) variable costs for a class I rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Commission's Rail Form A cost finding methodology (or an alternative methodology adopted by the Commission in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates;

[(2) variable costs for a rail carrier other than class I shall be presumed to be the average variable costs of all class I rail carriers in the region in which such carrier operates (as determined under paragraph (1) of this subsection) unless a rail car-

rier rebuts such presumption with other proof of variable costs; and

[(3) at the option of a carrier applying a surcharge or canceling the application of a joint rate under this section, revenue share may be determined by reference to past revenue settlements actually made in the most recent calendar year by connecting lines.

[(n) Surcharges applied under subsection (a) or (c) of this section and cancellations under subsection (c) of this section shall not be subject to the provisions of section 10726(a)(1)(B) of this title.

[(o) The Special Counsel of the Commission may, consistent with the rail transportation policy in section 10101a of this title, provide assistance to class III rail carriers and small businesses in preparing actions under this section.

[(p)(1) The authority to apply a surcharge under subsection (a) of this section, and (except as provided in paragraph (2)) the authority to cancel such a surcharge, shall expire 3 years after the effective date of the Staggers Rail Act of 1980 unless extended for one additional year by the Commission upon petition of any rail carrier and for good cause shown.

[(2) Any surcharge lawfully applied under subsection (a) of this section shall remain in effect in accordance with its terms following the expiration of the provisions of this section. Any such surcharge applied during the 45-day period immediately preceding the date of the expiration of the provisions of this section shall, notwithstanding such expiration, be subject to cancellation under subsection (a)(2) or (a)(3) of this section during the 45-day period beginning on the date such surcharge is applied.

[§ 10706. Rate agreements: exemption from antitrust laws

[(a)(1) In this subsection—

[(A) "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) "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.

[(C) "Practicably participates in the movement" shall have such meaning as the Commission shall by regulation prescribe.

[(2)(A) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title that is a party to an agreement of at least 2 rail carriers or an agreement with a class of carriers referred to in subsection (d)(1) (B)–(E) of this section, 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 Commission for approval of that agreement under this subsection. The Commission shall approve the agreement only when it finds that the making and carrying out of

the agreement will further the transportation policy of section 10101a 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 Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, 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, as amended (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 Commission 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 Commission may approve an agreement under subparagraph (A) of this paragraph only when the carriers applying for approval file a verified statement with the Commission. 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 tariff changes only, if the Commission 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 that 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. This clause shall take effect on January 1, 1984, or on such earlier date as the Commission determines. If the Commission 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) Until January 1, 1984, subparagraph (A)(ii) and (A)(iii) of this paragraph do not apply to—

[(i) general rate increases to cover inflationary cost increases, or general rate decreases, for joint rates if the agreement gives shippers, under specified procedures, at least 15 days notice of the proposal and an opportunity to present comments on it before a tariff containing the increases or decreases is filed with the Commission; or

[(ii) broad tariff changes that are of at least substantially general application throughout the area where the changes will apply, except single line rates where subparagraph (A)(i) of this paragraph prohibits the participation of carriers with single line rates.

If the Commission finds at any time that the implementation of this subparagraph is not feasible, it may delay or suspend such implementation in whole or in part.

[(C)(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 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 carrier and one or more other 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 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 clause (I) or (II) are satisfied before allowing the introduction of any such evidence.

[(D) 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 Commission 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 Commission 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, as amended (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 Commission 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 Commission 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 Commission under subchapter I of chapter 105 of this title, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Commission for approval of that agreement under this paragraph. The Commission 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 10101a of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the terms required by the Commission, 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 Commission 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 Commission 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 Commission. The Commission 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 Commission.

[(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)(1) In this subsection, "single-line rate" refers to a rate, charge, or allowance proposed by a single motor common carrier that is applicable only over its line and for which the transportation can be provided by that carrier.

[(2) As provided by this subsection, a motor common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may

enter into an agreement with one or more such carriers concerning rates (including charges between carriers and compensation paid or received for the use of facilities and equipment), allowances, classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them. Such agreement may be submitted to the Commission for approval by any carrier or carriers which are parties to such agreement and shall be approved by the Commission upon a finding that the agreement fulfills each requirement of this subsection, unless the Commission finds that such agreement is inconsistent with the transportation policy set forth in section 10101(a) of this title. The Commission may require compliance with reasonable conditions consistent with this subtitle to assure that the agreement furthers such transportation policy. If the Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, 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.

[(3) Agreements submitted to the Commission under this subsection may be approved by the Commission only if each of the following conditions are met:

[(A) Each carrier which is a party to an agreement must file with the Commission a verified statement that specifies its name, mailing address, and telephone number of its main office; the names of each of its affiliates; the names, addresses, and affiliates of each of its officers and directors; the names, addresses, and affiliates 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. In this subparagraph, "affiliate" means a person controlling, controlled by, or under common control or ownership with another person and "ownership" means equity holdings in a business entity of at least 5 percent.

[(B) Any organization established or continued under an agreement approved under this subsection must comply with the following requirements:

[(i) subject to the provisions of subparagraphs (C), (D), (E), and (F) of this paragraph, (I) the organization may allow any member carrier to discuss any rate proposal docketed, but (II) after January 1, 1981, only those carriers with authority to participate in the transportation to which the rate proposal applies may vote upon such rate proposal;

[(ii) the organization may not interfere with each carrier's right of independent action and may not change or cancel any rate established by independent action after the date of enactment of this subsection, other than a general increase or broad rate restructuring, except that changes in such rates may be effected, with the consent of the carrier or carriers that initiated the independent action, for the purpose of tariff simplification, removal of discrimination, or elimination of obsolete items;

[(iii) the organization may not file a protest or complaint with the Commission against any tariff item published by or for the account of any motor carrier;

[(iv) the organization may not permit one of its employees or any employee committee to docket or act upon any proposal effecting a change in any tariff item published by or for the account of any of its member carriers;

[(v) upon request, the organization must divulge to any person the name of the proponent of a rule or rate docketed with it, must admit any person to any meeting at which rates or rules will be discussed or voted upon, and must divulge to any person the vote cast by any member carrier on any proposal before the organization;

[(vi) the organization may not allow a carrier to vote for one or more other carriers without specific written authority from the carrier being represented; and

[(vii) the organization shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed, except that if unusual circumstances require, the organization may extend such period, subject to review by the Commission.

[(C) No agreement approved under this subsection may provide for discussion of or voting on rates to which the provisions of section 10708(d) or 10730(b) of this title apply, except that rates established or filed under section 10730 of this title before the date of enactment of the Motor Carrier Act of 1980 or changes with respect to such rates may be discussed or voted on under agreements approved under this subsection until January 1, 1984.

[(D) No agreement approved under this subsection may provide for discussion of or voting upon single-line rates on or after January 1, 1984, except that such date shall be July 1, 1984, if the Motor Carrier Ratemaking Study Commission does not submit its final report under section 14(b)(4) of the Motor Carrier Act of 1980 on or before January 1, 1983. This subparagraph shall not apply to any single-line rate proposed by a motor common carrier of passengers. This subparagraph and subparagraph (B)(i)(II) of this paragraph shall not apply to the following:

[(i) general rate increases or decreases if the agreement gives shippers, under specified procedures, at least 15 days' notice of the proposal and an opportunity to present comments on it before a tariff containing the increases or decreases is filed with the Commission and if discussion of such increases or decreases is limited to industry average carrier costs and, after the date of elimination of the antitrust immunity by this subparagraph, does not include discussion of individual markets or particular single-line rates;

[(ii) changes in commodity classifications;

[(iii) changes in tariff structures if discussion of such changes is limited to industry average carrier costs and, after the date of elimination of antitrust immunity by this

subparagraph, does not include discussion of individual markets or particular single-line rates;

[(iv) publishing of tariffs, filing of independent actions for individual members carriers, providing of support services for members, and changes in rules or regulations which are of at least substantially general application throughout the area in which such changes will apply.

[(E) On and after January 1, 1983, no agreement approved under this subsection may provide for discussion of or voting upon any single-line rate proposed by a motor common carrier of passengers. On and after January 1, 1984, no agreement approved under this subsection may provide for discussion of or voting upon any joint rate proposed by one or more motor common carriers of passengers. This subparagraph shall not apply to any rate applicable to special or charter transportation. This subparagraph and subparagraph (B)(i)(II) of this paragraph shall not apply to the following:

[(i) any general rate increase or decrease, broad change in tariff structure, or promotional or innovative fare change, as defined by the Commission and subject to such notice requirements as the Commission may specify by regulation, if discussion of such general increase or decrease is limited to industry average carrier costs and intermodal competitive factors and does not include discussion of individual markets or particular single-line rates or joint rates; and

[(ii) publishing of tariffs, filing of independent actions for individual member carriers, providing of support services for members, and changes in rules or regulations which are of at least substantially general application throughout the area in which such changes will apply.

[(F) After the effective date of this subparagraph, no agreement approved under this subsection may provide for discussion of or voting upon any rate applicable to special or charter transportation proposed by a motor common carrier of passengers. This subparagraph shall not apply to publication of any such rate.

[(G) In any proceeding in which a party to such proceeding alleges that a carrier voted, discussed, or agreed on a rate or allowance in violation of this subsection, that party has the burden of showing that the vote, discussion, or agreement occurred. A showing of parallel behavior does not satisfy that burden by itself.

[(H) The Commission shall, by regulation, determine reasonable quorum standards to be applied for meetings of organizations established or continued under an agreement approved under this subsection.

[(4) Notwithstanding any other provision of this subtitle, before the date on which the antitrust immunity is eliminated for discussion of or voting on single-line rates by paragraph (3)(D) of this subsection, the Commission may not take any action which would, on the basis of the type of carrier service involved (including service by carriers singly or in combination with other carriers), result in the exclusion of one or more motor common carriers of property

from discussion or voting under agreements authorized by this subsection on matters concerning rates, allowances, classifications, or divisions, except that before such date, the Commission may issue regulations which take effect on or after such date to carry out the provisions of such paragraph.

[(5) Notwithstanding any other provision of this subtitle (other than paragraph (3)(F) of this subsection, relating to special and charter transportation of passengers), before January 1, 1983, the Commission may not take any action which would, on the basis of the type of carrier service involved (including service by carriers singly or in combination with other carriers), result in the exclusion of one or more motor common carriers of passengers from discussion or voting under agreements authorized by this subsection on matters concerning rates, allowances, or divisions, except that before January 1, 1983, the Commission may issue regulations which take effect on or after January 1, 1983, to carry out the provisions of paragraph (3)(E) of this subsection.

[(c) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title (except a rail carrier or a motor common carrier that is a party to an agreement of at least 2 carriers related to rates (including charges between carriers and compensation paid or received for the use of facilities and equipment), allowances, classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them, may apply to the Commission for approval of that agreement under this subsection. The Commission 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 approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, 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.

[(d)(1) In this subsection, carriers are classified as follows:

[(A) Rail, express, and sleeping car carriers are a class.

[(B) Pipeline carriers are a class.

[(C) Motor carriers are a class.

[(D) Water carriers are a class.

[(E) Household goods freight forwarders are a class.

[(2) The Commission may not approve an agreement under this section—

[(A) between or among carriers of different classes unless, in addition to the finding required under subsection (a), (b), or (c) of this section, the Commission finds that the agreement is limited to matters related to transportation under joint rates or over through routes;

[(B) related to a pooling, division, or other matter to which subchapter III of chapter 113 of this title applies; or

[(C) establishing a procedure for determination of a matter through joint consideration unless the Commission finds that each party to the agreement has the absolute right under it to

take independent action before or after a determination is made under that procedure.

[(e) The Commission may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Commission, or its delegate, may inspect a record maintained under this section.

[(f) The Commission may review an agreement approved under subsection (a), (b), or (c) of this section and shall change the conditions of approval or terminate it when necessary to comply with (1) the public interest and subsection (a), or (2) subsection (b) or (c). The Commission 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.

[(g) The Commission may begin a proceeding under this section on its own initiative or on application. Action of the Commission 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), (b), or (c) of this section.

[(h) The Commission shall review each agreement approved under subsection (a) of this section periodically, but at least once every 3 years (1) to determine whether the agreement or an organization established or continued under one of those agreements still complies with the requirements of that subsection and the public interest, and (2) to evaluate the success and effect of that agreement or organization on the consuming public and the national rail freight transportation system. If the Commission finds that an agreement or organization does not conform to the requirements of that subsection, it shall end or suspend its approval. The Commission shall report to the President and Congress the results of the review as a part of its annual report under section 10311 of this title.

[(i)(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 Commission 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 subtitle and of the transportation policy of section 10101a of this title.

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

[§ 10707. Investigation and suspension of new rail carrier rates, classifications, rules, and practices

[(a) When a new individual or joint rate or individual or joint classification, rule, or practice related to a rate is filed with the Interstate Commerce Commission by a rail carrier providing trans-

portation subject to its jurisdiction under subchapter I of chapter 105 of this title, the Commission may begin a proceeding, on its own initiative or on complaint of an interested party, to determine whether the proposed rate, classification, rule, or practice violates this subtitle. The Commission must give reasonable notice to interested parties before beginning a proceeding under this subsection but may act without allowing an interested party to file an answer or other formal pleading in response to its decision to begin the proceeding.

[(b)(1) The Commission must complete a proceeding under this section and make its final decision by the end of the 5th month after the rate, classification, rule, or practice was to become effective, except that if the Commission reports to the Congress by the end of such 5th month that it cannot make a final decision by that time and explains the reason for the delay, it may take an additional 3 months to complete the proceeding and make its final decision. If the Commission does not reach a final decision within the applicable time period, the rate, classification, rule, or practice—

[(A) is effective at the end of that time period; or

[(B) if already in effect at the end of that time period, remains in effect.

[(2) If an interested party has filed a complaint under subsection (a) of this section, the Commission may set aside a rate, classification, rule, or practice that has become effective under this section if the Commission finds it to be in violation of this chapter.

[(c)(1) The Commission may not suspend a proposed rate, classification, rule, or practice during the course of a Commission proceeding under this section unless it appears from the specific facts shown by the verified statement of a person that—

[(A) it is substantially likely that the protestant will prevail on the merits;

[(B) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and

[(C) because of the peculiar economic circumstances of the protestant, the provisions of subsection (d) of this section do not protect the protestant.

[(2) The burden shall be on the protestant to prove the matters described in paragraph (1) (A), (B), and (C) of this subsection.

[(d)(1) If the Commission does not suspend a proposed rate increase under subsection (c) of this section, the Commission shall require the rail carrier to account for all amounts received under the increase until the Commission completes its proceedings under subsection (b) of this section. The accounting shall specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days.

[(2) If a rate is suspended under subsection (c) of this section and any portion of such rate is later found to be reasonable under this subtitle, the carrier shall collect from each person using the transportation to which the rate applies the difference between the

original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days, except that this paragraph shall not apply to general rate increases under section 10706 of this title.

[(3) If any portion of a proposed rate decrease is suspended under subsection (c) of this section and later found to be reasonable under this subtitle, the rail carrier may refund any part of the portion of the decrease found to comply with this subtitle if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper's traffic transported at such rate.

[(4) Notwithstanding the provisions of section 10741 or section 10761 of this title, the Commission shall, by rule, establish standards and procedures permitting a rail carrier to waive the collection of amounts due under this subsection if such amounts are not significant.

[§ 10707a. Zone of rail carrier rate flexibility

[(a) In this section—

[(1)(A) "base rate" means, with respect to the transportation of a particular commodity (i) for the 24-month period beginning on October 1, 1980, the rate in effect on October 1, 1980, (ii) for the 24-month period beginning on October 1, 1982, the rate in effect on October 1, 1982, and (iii) for the 5-year period beginning on October 1, 1984, and for each subsequent 5-year period, the rate in effect on the first day of the applicable 5-year period.

[(B) If no rate exists for the transportation of a particular commodity on October 1, 1980, the base rate for the transportation of such commodity shall be the rate established by the rail carrier (divided by the latest rail cost adjustment factor published by the Commission), unless such rate is found to be unreasonable by the Commission, in which case the base rate shall be the rate authorized by the Commission (divided by the latest rail cost adjustment factor published by the Commission).

[(2)(A) "adjusted base rate" means the base rate for the transportation of a particular commodity multiplied by the latest rail cost adjustment factor published by the Commission pursuant to this paragraph.

[(B) Commencing with the fourth quarter of 1980, the Commission 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 Commission, with appropriate adjustments to reflect the changing 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 1980, or for the fourth quarter of 1982 or for the fourth quarter of every fifth year thereafter, as appropriate.

[(b)(1) Except as provided in paragraph (3) of this subsection, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may increase any rate over which the Commission has juridiction under section 10709 of this title so long as the increased rate is not greater than the adjusted base rate for the transportation involved, plus any rate increases implemented under subsection (c) or (d) of this section.

[(2) A rate increase authorized under this subsection may not be found to exceed a reasonable maximum for the transportation involved.

[(3) A rail carrier may not increase a rate under this subsection to the extent that the cost increases to such carrier due to inflation are recovered through (A) general rate increases pursuant to section 10706 of this title, or (B) inflation-based rate increases under section 10712 of this title applicable to that rate.

[(c)(1) During the 12-month period beginning on the effective date of the Staggers Rail Act of 1980 and during each of the 3 succeeding 12-month periods, a rail carrier may, in addition to rate increases authorized under subsection (b) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title by an annual amount of not more than 6 percent of the adjusted base rate, except that in no event shall the total increase under this subsection result in a rate which is more than 118 percent of the adjusted base rate.

[(2)(A) If any portion of a rate increase under this subsection is not implemented in the year in which it is authorized, such portion may, except as provided in subparagraph (B) of this paragraph, be implemented only in the next succeeding year.

[(B) If any portion of the total rate increase authorized under this subsection is not implemented by the end of the 4-year period beginning on the effective date of the Staggers Rail Act of 1980, such portion may be implemented in the next 2 succeeding years, except that in no event may a rail carrier increase a rate under this subsection or under subsection (d) of this section in either of such 2 succeeding years by an annual amount of more than 10 percent of the adjusted base rate.

[(d)(1) Except as provided in paragraph (3) of this subsection, during the 12-month period beginning on October 1, 1984, and during each succeeding 12-month period, a rail carrier may, in addition to rate increases under subsection (b) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title by an annual amount of not more than 4 percent of the adjusted base rate.

[(2) No portion of any rate increase under this subsection which is not implemented in the year in which it is authorized may be implemented in any other year.

[(3)(A) The provisions of this subsection shall not apply to a rail carrier proposing to increase a single line rate if such carrier earns adequate revenues, as determined by the Commission under section 10704(a)(2) of this title.

[(B) The Commission shall, after a hearing on the record, prescribe such rules with respect to joint rates as necessary to ensure that rail carriers which earn adequate revenues, as determined

under section 10704(a)(2) of this title, do not receive the rate increases authorized by this subsection unless the Commission determines that it is unable to prescribe such rules without precluding rail carriers not earning adequate revenues from receiving the rate increases authorized under this subsection.

[(e)(1) Notwithstanding the provisions of section 10707 of this title, in the case of any rate increase by a rail carrier that is authorized under subsection (c) or (d) of this section—

[(A)(i) the Commission may not suspend such rate increase pending final Commission action; and

[(ii) except as provided in paragraph (2) of this subsection, the Commission may not begin an investigation proceeding under section 10707 of this title with respect to the reasonableness of such rate increase; but

[(B) an interested party may file a complaint under section 11701(b) of this title alleging that such rate increase violates the provisions of this subtitle.

In considering any complaint challenging a rate increase that is authorized under subsection (c) of this section and that results in a revenue-variable cost percentage that is less than the lesser of the percentages described in clauses (i) and (ii) of paragraph (2)(A), the Commission shall, in determining the reasonableness of such rate increase, give due consideration to whether the carrier proposing the rate increase has attained adequate revenues, as determined by the Commission under section 10704(a)(2) of this title, giving regard to preventing a carrier with adequate revenues from realizing excessive profits on the traffic involved and also the policy of bringing to an adequate level the revenues of carriers not having an adequate revenue level.

[(2)(A) If a rate increase authorized under this section in any year results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than—

[(i) 20 percentage points above the revenue-variable cost percentage applicable in that year under section 10709(d) of this title; or

[(ii) a revenue-variable cost percentage of 190 percent,

whichever is less, the Commission may, on its own initiative, or on complaint of an interested party, begin an investigation proceeding to determine whether the proposed rate increase violates this subtitle.

[(B) In determining whether to investigate or not to investigate any proposed rate increase that results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the lesser of the percentages described in clauses (i) and (ii) of subparagraph (A) of this paragraph (without regard to whether such rate increase is authorized under this section), the Commission shall set forth its reasons therefor, giving due consideration to the following factors:

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

[(ii) 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

[(iii) the impact of the proposed rate or rate increase on the attainment of the national energy goals and the rail transportation policy under section 10101a of this title, taking into account the railroads' role as a primary source of energy transportation and the need for a sound rail transportation system in accordance with the revenue adequacy goals of section 10704 of this title.

This subparagraph shall not be construed to change existing law with regard to the nonreviewability of such determination.

[(C) In determining whether a rate is reasonable, the Commission shall consider, among other factors, evidence of the following:

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

[(ii) 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

[(iii) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

[(f) In any proceeding under this section, evidence of the underlying rail carrier rate is admissible.

[(g) A finding by the Commission that a rate increase exceeds the increase authorized under this section does not establish a presumption that (1) the rail carrier proposing such rate increase has or does not have market dominance over the transportation to which the rate applies, or (2) the proposed rate exceeds or does not exceed a reasonable maximum.

[(h) The authority of the Commission to determine and prescribe reasonable rules, classifications, and practices may not be used, directly or indirectly, to limit the rates which rail carriers are otherwise authorized to establish under this subtitle.

[§ 10708. Investigation and suspension of new nonrail carrier rates, classifications, rules, and practices

[(a)(1) The Interstate Commerce Commission may begin a proceeding to determine the lawfulness of a proposed rate, classification, rule, or practice immediately, on its own initiative or on application of an interested party when—

[(A) a new individual or joint rate or individual or joint classification, rule, or practice affecting a rate is filed with the Commission by a common carrier, other than a rail carrier, under this subtitle; or

[(B) a new or reduced rate or rule or practice that causes a reduction of a rate is filed with the Commission by a contract carrier under this subtitle.

[(2) The Commission must give reasonable notice before beginning a proceeding under this section but may act without allowing an interested carrier to file an answer or other formal pleading in response to its decision to begin the proceeding. The Commission may take whatever final action on a rate, classification, rule, or

practice under this section, after a full hearing (whether completed before or after the rate, classification, rule, or practices goes into effect), as it could in a proceeding begun after a rate, classification, rule, or practice became effective.

[(b) Pending final Commission action in a proceeding under subsection (a) of this section, the Commission may suspend the proposed rate, classification, rule, or practice at any time for not more than 7 months beyond the time it would otherwise go into effect by (1) delivering to each affected carrier, and (2) filing with the proposed rate, classification, rule, or practice, a statement of reasons for the suspension. If the Commission does not take final action during the suspension period, the proposed rate, classification, rule, or practice is effective at the end of that period. However, if an increase in a rate for, or related to, transportation of property by an express, sleeping car, or pipeline carrier becomes effective under this subsection, the Commission may require the interested carrier to account for all amounts received under it and specify by whom and on whose behalf those amounts were paid. When the Commission takes final action, it may require the carrier to refund, with interest, to the persons on whose behalf those amounts were paid, the part of the increased rate found to be in violation of this subtitle.

[(c) In a proceeding under this section, the burden is on the carrier proposing the changed rate, classification, rule, or practice to prove that the change is reasonable. The Commission shall give proceedings under this section preference over all other proceedings related to that type of carrier pending before it and make its decision at the earliest practical time.

[(d)(1) Notwithstanding any other provision of this title, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor common carrier of property or household goods freight forwarder on the grounds that such rate is unreasonable on the basis that it is too high or too low if—

[(A) the carrier notifies the Commission that it wishes to have the rate considered pursuant to this subsection; and

[(B) the aggregate of increases and decreases in any such rate is not more than 10 percent above the rate in effect one year prior to the effective date of the proposed rate, nor more than 10 percent below the lesser of the rate in effect on July 1, 1980 (or, in the case of any rate which a carrier first establishes after July 1, 1980, for a service not provided by such carrier on such date, such rate on the date such rate first becomes effective), or the rate in effect one year prior to the effective date of the proposed rate.

[(2) The Commission, by rule, may increase the percentages specified in paragraph (1)(B) of this subsection for any group of motor common carriers of property or household goods freight forwarders if it finds that—

[(A) there is sufficient actual and potential competition to regulate rates; and

[(B) there are benefits to (i) carriers or household goods freight forwarders, (ii) shippers, and (iii) the public from further rate flexibility;

except that the Commission may not increase such percentages by more than 5 percentage points during any one-year period.

[(3)(A) In determining, pursuant to paragraph (1)(B) of this subsection whether the aggregate of increases and decreases in a proposed rate that is to take effect on or before the 730th day following the date of enactment of this paragraph is more than 10 percent (or such other percentage as the Commission may establish under paragraph (2) of this subsection) above the rate in effect one year prior to the effective date of the proposed rate, general rate increases obtained in the one-year period prior to the effective date of the proposed rate shall not be included in such aggregate, except to the extent that such general rate increases exceed 5 percent of the rate in effect one year prior to the effective date of the proposed rate.

[(B) In the case of a proposed rate that is to take effect after the 730th day following the date of enactment of this paragraph, the percentage which first appears in paragraph (1)(B) of this subsection (relating to the upper limit of the zone of ratemaking freedom), or such other percentage as the Commission may establish under paragraph (2) of this subsection in lieu of such percentage, 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 one-year period prior to the effective date of the proposed rate.

[(4) Notwithstanding any other provision of this title, the Commission may not investigate, suspend, revise, or revoke any single-line rate proposed by a motor common carrier of passengers, or joint rate proposed by one or more such carriers, applicable to any transportation (other than special or charter transportation) on the grounds that such rate is unreasonable on the basis that it is too high or too low if—

[(A) the carrier or carriers notify the Commission that they wish to have the rate considered pursuant to this subsection; and

[(B) the aggregate of increases and decreases in any such rate is not more than 10 percent above the rate in effect one year prior to the effective date of the proposed rate, nor more than 20 percent below the lesser of the rate in effect on the effective date of this paragraph (or, in case of any rate which the carrier or carriers first establish after such date for a service not provided by the carrier or carriers on such date, such rate on the date such rate first becomes effective), or the rate in effect one year prior to the effective date of the proposed rate.

[(5) One year after the effective date of this paragraph, the first and second percentages specified in paragraph (4)(B) of this subsection shall change to 15 percent and 25 percent, respectively. Two years after the effective date, the first and second percentages specified in paragraph (4)(B) of this subsection shall change to 20 percent and 30 percent, respectively.

[(6) Any rate implemented by a carrier pursuant to this subsection shall be subject to the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), except that the docketing and publication of such rate by the carrier under section 10706(b) of this title shall not be construed as a violation of the antitrust

laws. Evidence that any motor common carrier of passengers established pursuant to this subsection a joint or single-line rate applicable to transportation over any route which is the same as or similar to a joint rate applicable to transportation over such route which such carrier together with one or more other motor common carriers of passengers established pursuant to this subsection shall not be in and of itself sufficient to establish a violation of any such antitrust law. Nothing in this subsection shall limit the Commission's authority to suspend and investigate proposed rates on the basis that such rates may violate the provisions of section 10741 of this title or constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title.

[(e) Notwithstanding any other provision of this title, 3 years after the effective date of this subsection, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor common carrier of passengers on the grounds that such rate is unreasonable on the basis that it is too high or too low, unless the proposed rate is established collectively in accordance with the procedures of an agreement approved by the Commission under section 10706(b) of this title. In publishing and filing a tariff under section 10762 of this title, the carrier shall disclose whether such rate is the result of collective ratemaking procedures pursuant to an agreement approved by the Commission under section 10706(b) of this title.

[(f) Notwithstanding any other provision of this title, an interested party may file a complaint under section 11701 of this title challenging the reasonableness of a rate filed under this section by a motor carrier of passengers. Any such complaint proceeding shall be finally determined by the Commission no later than 90 days after the filing of the complaint.

[(g) Notwithstanding any other provision of this title, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor common carrier of passengers applicable to special or charter transportation. Nothing in this subsection shall limit the Commission's authority to suspend and investigate proposed rates on the basis that such rates constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title.

[§ 10709. Determination of market dominance in rail carrier rate proceedings

[(a) In this section, "market dominance" means an absence of effective competition from other 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 Interstate Commerce Commission under subchapter I of chapter 105 of this title is challenged as being unreasonably high, the Commission shall determine, within 90 days after the start of a proceeding under section 10707 of this title to investigate the lawfulness of that rate, whether the carrier proposing the rate has market dominance over the transportation to which the rate applies. The Commission may make that determination on its own initiative or on complaint. A finding by the Commission that the carrier does not have market

dominance is determinative in a proceeding under this subtitle related to that rate or transportation unless changed or set aside by the Commission or set aside by a court of competent jurisdiction.

[(c) When the Commission 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. This subsection does not limit the power of the Commission to suspend a rate under section 10707(c) of this title. However, if the Commission has found that a carrier does not have market dominance over the transportation to which the rate applies, the Commission may suspend an increase in that rate as being in excess of a reasonable maximum for that transportation only if it specifically changes or sets aside its prior determination of market dominance.

[(d)(1) In this subsection—

[(A) "fixed and variable cost" means all cost incurred by rail carriers in the transportation of freight, but limiting the return on equity capital to a rate equal to the embedded cost of debt.

[(B)(i) "cost recovery percentage" means the lowest revenue-variable cost percentage which, if all movements that produced revenues resulting in revenue-variable cost percentages in excess of the cost recovery percentage are deemed to have produced only revenues resulting in the cost recovery percentage, would produce revenues which would be equal, when combined with total revenues produced by all other traffic transported by rail carrier, to the total fixed and variable cost of the transportation of all traffic by rail carrier.

[(ii) for purposes of determining the cost recovery percentage only, "revenue-variable cost percentage" means the quotient, expressed as a percentage figure, obtained by dividing the total revenues produced by the transportation of all traffic received by rail carriers for rail transportation by the total variable cost of such transportation.

[(2) In making a determination under this section, the Commission 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—

[(A) 160 percent during the period beginning on the effective date of the Staggers Rail Act of 1980 and ending September 30, 1981;

[(B) 165 percent during the period beginning October 1, 1981, and ending September 30, 1982;

[(C) 170 percent during the period beginning October 1, 1982, and ending September 30, 1983;

[(D) 175 percent or the cost recovery percentage, whichever is less, during the period beginning October 1, 1983, and ending September 30, 1984; and

[(E) the cost recovery percentage, during each 12-month period beginning on or after October 1, 1984.

For purposes of subparagraphs (D) and (E) of this paragraph, the cost recovery percentage shall in no event be less than a revenue-variable cost percentage of 170 percent or more than a revenue-variable cost percentage of 180 percent.

[(3) For purposes of determining the revenue-variable cost percentage for a particular transportation, variable costs shall be determined pursuant to section 10705a(m)(1) of this title, with adjustments specified by the Commission. A rail carrier may meet its burden of proof under this subsection by establishing its variable costs in accordance with such section 10705a(m)(1), but a shipper may rebut that showing by evidence of such type, and in accordance with such burden of proof, as the Commission shall prescribe.

[(4) A finding by the Commission 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 the applicable percentage under paragraph (2) of this subsection 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.

[(5)(A) Within 180 days after the effective date of the Staggers Rail Act of 1980 and on an annual basis thereafter, the Commission shall determine the cost recovery percentage for the transportation of all traffic received by rail carriers. The Commission shall make such determination after considering each individual revenue-variable cost percentage resulting from the revenues and costs of a valid and reliable statistical sample of all movements of commodities transported by class I rail carriers during the most recent calendar year for which such information is available.

[(B) If, on the basis of calculations under subparagraph (A) of this paragraph, the Commission determines that revenues earned by all class I rail carriers during the previous calendar year do not exceed the fixed and variable costs of such carriers, then the cost recovery percentage for purposes of this section shall be deemed to be equal to the cost recovery percentage last determined by the Commission.

[(C) The Commission shall, in its annual report submitted to the Congress under section 10311 of this title, set forth the cost recovery percentage determined for that year under subparagraph (A) of this paragraph.

[§ 10710. Elimination of discrimination against recyclable materials

[The Interstate Commerce Commission shall maintain regulations that will eliminate discrimination against the transportation of recyclable materials in rate structures and in other Commission practices where discrimination exists.

[§ 10711. Effect of certain sections on rail rates and practices

[Sections 10701 (a) and (b), 10707, 10709, 10727, and 10728 of this title, related to rail carriers, do not—

[(1) modify the application of sections 10701(c), 10726, 10741–10744, or 11103 of this title in determining whether a rate or practice complies with this subtitle;

[(2) make a competitive practice that is unfair, destructive, predatory, or otherwise undermines competition that is necessary in the public interest comply with this subtitle;

[(3) affect a law in existence on February 5, 1976, or the authority of the Interstate Commerce Commission related to rate relationships between ports; or

[(4) affect the authority and responsibility of the Commission to guarantee the equalization of rates in the same port.

[§ 10712. Inflation-based rate increases

[(a) The Commission may, on a quarterly basis and consistent with the rail transportation policy set forth in section 10101a of this title, prescribe a percentage rate increase or rate index for rail carriers in order to compensate for inflationary cost increases. Such percentage rate increase or rate index may be applicable on an industry-wide, territory-wide, or carrier-by-carrier basis.

[(b) Within 60 days after the date the Commission prescribes a percentage rate increase or rate index under subsection (a) of this section, each rail carrier or group of rail carriers shall notify the Commission of any rate or group of rates which such carrier or carriers intend to be excluded from the application of such percentage rate increase or rate index.

[(c) For purposes of this section, a percentage rate index may permit rate increases within a specified range to allow carriers to recover a total revenue increase specified by the Commission as necessary to compensate for inflationary cost increases.

[§ 10713. Contracts

[(a) One or more rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions. Such a rail carrier may not enter into a contract with purchasers of rail service except as provided in this section.

[(b)(1) Each contract entered into under this section shall be filed with the Commission, together with a summary of the contract containing such nonconfidential information as the Commission prescribes. The Commission shall publish special tariff rules for such contracts in order to assure that the essential terms of the contract are available to the general public in tariff format.

[(2)(A) The essential terms of any contract for the transportation of agricultural commodities to be made available to the general public in tariff format under this subsection shall include, but shall not be limited to (i) the identity of the shipper party to the contract; (ii) the specific origins, transit points and other shipper facilities subject to the contract, and destinations served under such contract; (iii) the duration of the contract, including provisions for optional extension; (iv) the actual volume requirements, if any; (v) whether any transporation service has begun under a contract before the date such contract is filed with or approved by the Com-

mission, and (vi) the date on which the contract became applicable to the transportation services provided under the contract. The Commission shall interpret this subsection to provide for liberal discovery to shippers seeking remedies under subsection (d)(2)(B) of this section.

[(B) Any amendment, supplement, or change to any term or provision of any contract described in subparagraph (A), including extensions of such contract, changes of origin, transit points, affected shipper facilities, destination points, or negotiated economic terms, shall be deemed to be a separate and new contract for the purposes of this subsection. Such amendments, supplements, or changes shall be filed separately with the Commission as provided in paragraph (1).

[(C) Within 60 days after the date of the enactment of the Conrail Privatization Act, the Commission shall issue regulations which require that essential terms of contracts described in subparagraph (A) shall be made available to the general public in tariff format as provided in this paragraph.

[(D) The railroad contract rate advisory service established pursuant to subsection (m) of this section shall assess the impact on competition among argicultural shippers of variations between contract rates for various shipments and the published single car rates, and shall submit a report to the Congress not later than 120 days after the date of the enactment of the Conrail Privatization Act.

[(c) A contract filed under this section shall be approved by the Commission, as provided in subsection (e) of this section, unless the Commission determines in a proceeding under subsection (d) of this section that such contract is in violation of this section.

[(d)(1) No later than 30 days after the date of filing of a contract under this section, the Commission may, on its own initiative or on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

[(2)(A) In the case of a contract other than a contract for the transportation of agricultural commodities (including forest products and paper), a complaint may be filed—

[(i) by a shipper only on the grounds that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting 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 the case of a contract for the transportation of agricultural commodities (including forest products and paper), in addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper 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 subtitle.

In making a determination under clause (ii) of this subparagraph, the Commission 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 Commission may establish, the Commission shall determine whether the contract that is the subject of such proceeding is in violation of this section.

[(B) If the Commission 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 carrier, the Commission shall, subject to the provisions of this section, order such 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.

[(e) Approval of a contract filed under this section shall be effective—

[(1) on the date the Commission expressly approves such contract, but in no event before the end of the 30-day period beginning on the date such contract is filed or after the end of the 60-day period beginning on such date; or

[(2) if the Commission has not disapproved such contract by the end of the 60-day period beginning on the date such contract is filed, at the end of such 60-day period.

[(f) The Commission may limit the right of a rail carrier to enter into future contracts under this section following a determination that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under section 11101 of this title.

[(g) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under this section, except to the extent necessary to comply with section 11128 of this title.

[(h) 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.

[(i)(1) A contract that is approved by the Commission under this section, and transportation under such contract, shall not be subject to this subtitle, and may not be subsequently challenged before the Commission or in any court on the grounds that such contract violates a provision of this subtitle.

[(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.

[(j) The provisions of this section shall not affect the status of any lawful contract between a rail carrier and one or more pur-

chasers of rail service that is in effect on the effective date of the Staggers Rail Act of 1980. Any such contract shall hereafter have the same force and effect as if it has been entered into in accordance with the provisions of this section. Nothing in this section shall affect the rights of the parties to challenge the existence of such a contract.

[(k)(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), except that in the case of a proposed contract between a class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment utilized on the average during the prior 3-year period may be used for such contract without prior authorization by the Commission.

[(2) The Commission 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 Commission 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.

[(l) Service under a contract approved under this section shall be deemed to be a separate and distinct class of service, and the equipment used in the fulfillment of such a contract shall not be subject to car service decisions under section 11123 of this title.

[(m) The Commission shall establish a railroad contract rate advisory service. The advisory service shall—

[(1) compile and disseminate to interested parties nonconfidential summaries of the provisions of individual contract information relating to the provisions of contracts entered into under this section with regard to various goods, items, and commodities covered by such contracts;

[(2) provide the Commission and interested parties with advice regarding contracts; and

[(3) assess the impact on competition among shippers of variations between contract rates for various shipments and the published single car rates, and submit a report on such impact to the Congress not later than 90 days after the effective date of the Staggers Rail Act of 1980.

[SUBCHAPTER II—SPECIAL CIRCUMSTANCES

[§ 10721. Government traffic

[(a)(1) Except as provided in this section, the full applicable commercial rate shall be paid for transportation for the United States Government by a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under this subtitle. 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 common carrier lawfully operating in the area where the transportation will be provided. When prescribing rates for transportation or service by those common carriers, the Commission shall consider increased revenues those carriers receive under this subsection to reflect those increases in appropriate readjustments of their rates.

[(2) Paragraph (1) of this subsection does not apply, and the law related to compensation for transportation for the United States Government in effect immediately before September 18, 1940, applies to a rail carrier if that carrier, or its predecessor in interest, received a grant of land from the United States to aid in constructing the railroad it operates but did not file a release with the Secretary of the Interior before September 18, 1941, of claims against the United States Government to, or arising out of, lands that were granted, claimed to have been granted, or claimed should have been granted to that carrier or its predecessor in interest. This paragraph does not require a rail carrier to reconvey to the United States land patented or certified to it or prevent the patent of land that the Secretary of the Interior found was sold by the carrier to an innocent purchaser for value or as preventing the patent of land listed or selected by the carrier and finally approved by the Secretary of the Interior to the extent that issuance of those patents is authorized by law.

[(b)(1) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title may transport individuals for the United States Government without charge or at reduced rates. The carriers may transport custom inspectors and immigration officers without charge. A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title shall provide transportation for the United States Postal Service under chapters 50 and 52 of title 39, and may transport property for the United States Government, a State, or municipal government without charge or at reduced rates; except that any rates for the transportation of household goods for the United States Government shall not be predatory.

[(2) Unless a carrier is advised by the United States Government that disclosure of a quotation or tender of a rate established under paragraph (1) of this subsection for transportation provided to the United States Government would endanger the national security, the carrier shall file the quoted or tendered rate, including a retroactive rate made after the transportation has been provided, concurrently, with the Commission and the department, agency, or instrumentality of the United States Government for which the quotation or tender was made or for which the proposed transportation is to be provided. A carrier may quote or tender a rate established under an agreement made and approved under section 10706 of this title, but the exemption from the antitrust laws provided by that section applies only when the filing requirements of this paragraph are met.

[(3) Nothing in this subsection shall limit the Commission's authority to suspend and investigate proposed rates for the transportation of household goods for the United States Government on the

basis that such rates constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title. However, pending final Commission action in a proceeding under section 10708 of this title to determine whether a proposed rate for the transportation of household goods for the United States Government under this subsection is predatory or not, the Commission may suspend the proposed rate under subsection (b) of such section 10708 only if it appears from specific facts shown by the verified complaint of a person that—

[(A) without suspension, the proposed rate will cause substantial injury to the complainant; and

[(B) it is likely that the complainant will prevail on the merits.

[(c) A different policy, rule of rate making, system of accounting, method of determining costs of transportation, value of property, or rate of return may not be applied to a water carrier owned or controlled by the United States Government than is applied to a water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title.

[§ 10722. Special passenger rates

[(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may establish mileage, excursion, and commutation passenger rates including joint interchangeable 5,000 mile passenger rates with the privilege of carrying an amount of baggage without charge for at least 1,000 miles. A carrier that establishes a rate under this subsection may issue tickets reflecting that rate. A carrier that establishes a joint interchangeable 5,000 mile passenger rate shall also establish rules related to that rate specifying the amount of baggage that may be carried without charge under it.

[(b) A common carrier providing transportation subject to the jurisdiction of the Commission under one of those subchapters may establish reduced rates for individuals when the cost of that transportation is an expense of an individual who—

[(1) is a member of the armed forces of the United States or another country when that individual is traveling in uniform on official leave, furlough, or pass; or

[(2) has been released from the armed forces of the United States not more than 30 days before beginning that transportation and is traveling home or to a prospective place of abode.

[(c) A common carrier providing transportation subject to the jurisdiction of the Commission under one of those subchapters may provide transportation without charge for an individual who is—

[(1) a necessary caretaker of livestock, poultry, milk, or fruit;

[(2) an executive officer, general chairman, or counsel of an employee organization authorized to represent employees of that carrier under chapter 8 of title 45;

[(3) an employee in charge of the mails when working or traveling to or from work;

[(4) a newspaper carrier on a train;

[(5) a baggage agent; or

[(6) a witness attending a legal investigation in which that carrier has an interest.

[(d)(1) In this subsection—

[(A) "employee of a carrier" includes an individual who—

[(i) is furloughed, pensioned, or not on active duty because of advanced age or infirmity that occurred while the individual was employed by that carrier;

[(ii) is being transported for purposes of reemployment by that carrier; or

[(iii) was killed while employed by a carrier.

[(B) "family" refers to the family of an individual named in clause (A) of this paragraph and includes the surviving spouse or minor child of an employee who died while employed by a carrier.

[(2) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title may provide transportation without charge for officers and employees (and their families) of that carrier, another carrier (by exchange of passes or tickets), or a telegraph, telephone, or cable company. A household goods freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter may provide services related to movement of property for those individuals without charge. However, transportation of or service provided for, household goods, must be due to a change in the place of employment of an officer or employee while employed by that carrier.

[§ 10723. Charitable purposes

[(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III, of chapter 105 of this title may provide transportation without charge for—

[(A) an indigent or homeless individual (including an individual transported by a hospital, charitable organization, or municipal government and the necessary agents employed in that transportation);

[(B) an individual who is confined to or about to enter or return home after discharge from a—

[(i) facility of the Department of Veterans Affairs;

[(ii) State home for disabled volunteer soldiers; or

[(iii) soldiers' and sailors' home, under an arrangement with the board of managers of that facility;

[(C) a minister of religion; and

[(D) an individual who is confined to a hospital or charitable facility.

[(2) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title may provide transportation for property without charge or at a reduced rate for—

[(A) a charitable purpose, including transportation referred to in paragraph (1) of this subsection; or

[(B) use in a public exhibition.

[(b)(1) A common carrier subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter may provide transportation without charge to an individual who is—

[(A) engaged only in charitable work;

[(B) injured in an accident (together with the physicians and nurses attending that individual); or

[(C) an individual traveling on behalf of a nonprofit organization which provides recreational, housing or other services and benefits for the general welfare of employees of common carriers.

[(2) That carrier (other than a motor carrier of passengers) may also establish a rate and related rule equal to the rate charged for the transportation of one individual when that rate is for the transportation of—

[(A) a totally blind individual and an accompanying guide or a dog trained to guide the individual; or

[(B) a disabled individual and accompanying attendant when required because of the disability.

[(3) In the case of a motor carrier of passengers, that carrier may also establish a rate and related rule equal to the rate charged for the transportation of 1 individual when that rate is for the transportation of—

[(A) a totally blind individual and an accompanying guide or a dog trained to guide the individual;

[(B) a disabled individual and accompanying attendant, or animal trained to assist the individual, or both, when required because of disability; or

[(C) a hearing-impaired individual and a dog trained to assist the individual.

[§ 10724. Emergency rates

[(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under a subchapter I, II, or III of chapter 105 of this title may transport passengers without charge to provide relief during general emergencies.

[(b)(1) The Commission may authorize a common carrier providing transportation or service subject to its jurisdiction under chapter 105 of this title to give reduced rates for service and transportation of property to or from an area in the United States to provide relief during emergencies. When the Commission takes action under this subsection, it must—

[(A) define the area of the United States in which the reduced rates will apply;

[(B) specify the period during which the reduced rates are to be in effect; and

[(C) define the class of persons entitled to the reduced rates.

[(2) The Commission may specify those persons entitled to reduced rates by reference to those persons designated as being in need of relief by the United States Government or by a State government authorized to assist in providing relief during the emergency. The Commission may act under this subsection without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

[§ 10725. Special freight forwarder rates

[(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may establish—

[(1) assembling rates and related classifications and rules for transportation of less-than-carload or less-than-truckload shipments to a place for further movement as part of a carload or truckload shipment; and

[(2) distribution rates and related classifications and rules for transportation of less-than-carload or less-than-truckload shipments moving from a place to which those shipments have moved as a part of a carload or truckload shipment.

[(b) A rate and related classification and rule established under subsection (a) of this section applies to household goods freight forwarders and other persons using common carrier transportation under like conditions and may differ from other rates and related classifications and rules that contemporaneously apply to the same common carrier transportation when the difference is justified by a difference in the respective conditions under which that transportation is used. A rate referred to in subsection (a) (1) or (2) of this section may not be established to cover the line-haul transportation between the principal concentration place and the principal break-bulk place.

[(c) When establishing a rate, classification, rule, or practice, a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may consider the type of property tendered to it by a household goods freight forwarder for transportation when the property is in parcels that do not exceed 70 pounds in weight or 100 inches in length and girth combined. The carrier may establish the lowest rate for the transportation that allows it to receive adequate compensation for transporting the property.

[§ 10726. Long and short haul transportation

[(a)(1) A carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I or III of chapter 105 of this title (except an express carrier) may not charge or receive more compensation for the transportation of property of the same kind or of passengers—

[(A) for a shorter distance than for a longer distance over the same line or route in the same direction (the shorter distance being included in the longer distance); or

[(B) under a through rate than under the total of the intermediate rates it may charge or receive under this chapter.

This paragraph does not authorize a carrier to charge or receive equal compensation for transportation over a shorter distance than a longer distance.

[(2) Notwithstanding paragraph (1) of this subsection, a carrier operating over a circuitous line or route to or from a place in competition with another carrier of the same type that operates over a more direct line or route may establish a rate (otherwise complying with this chapter) for that transportation to meet the rate of the carrier operating over the more direct line or route. A rate established for transportation over a circuitous route under this sub-

section is not evidence of the compensatory character of rates in other proceedings.

[(b) In special cases, the Commission may authorize a carrier to charge less for transportation over a longer distance than it charges for transportation over a shorter distance. The Commission may prescribe the extent to which a carrier authorized to charge less under this subsection may be granted relief from subsection (a) of this section. However, the Commission may not authorize a rate—

[(1) to or from the more distant place unless it is reasonably compensatory; or

[(2) because of potential water competition not actually in existence.

[(d) The Commission shall begin a proceeding under subsection (b) of this section on application of a carrier. A carrier may file a proposed rate with its application, and if the application is approved, the Commission shall allow the rate to become effective one day after the approval becomes effective.

[§ 10728. Separate rates for distinct rail services

[(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may, on its own initiative or at the request of a shipper or receiver of property, establish separate rates for distinct rail services to—

[(1) encourage competition;

[(2) promote increased reinvestment by rail carriers; and

[(3) encourage and make easier increased non-railroad investment in the production of rail services.

[(b) The Commission shall maintain expeditious procedures to permit separate rates for distinct rail services to—

[(1) encourage those services to be priced in accordance with the cash-outlay incurred by the carrier and the demand for them; and

[(2) enable shippers and receivers to evaluate transportation and related rates and alternatives.

[§ 10730. Rates and liability based on value

[(a) The Interstate Commerce Commission may require or authorize a carrier (including a motor common carrier of household goods but excluding any other motor common carrier of property and excluding any rail carrier) providing transportation or service subject to its jurisdiction under subchapter I, II, or IV of chapter 105 of this title, to establish rates for transportation of property 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, when that value would be reasonable under the circumstances surrounding the transportation. A rate may be made applicable under this section to livestock only if the livestock is valuable chiefly for breeding, racing, show purposes, or other special uses. A tariff filed with the Commission by a household goods freight forwarder under subchapter IV of this chapter shall refer specifically to the action of the Commission under this section.

[(b)(1) Subject to the provisions of paragraph (2) of this subsection, a motor common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or a freight forwarder may, subject to the provisions of this chapter (including, with respect to a motor carrier, the general tariff requirements of section 10762 of this title), establish rates for the transportation of property (other than household goods) under which the liability of the carrier or freight forwarder for such property is limited to a value established by written declaration of the shipper or by written agreement between the carrier or freight forwarder and shipper if that value would be reasonable under the circumstances surrounding the transportation.

[(2) Before a carrier or freight forwarder may establish a rate for any service under paragraph (1) of this subsection, the Commission may require such carrier or freight forwarder to have in effect and keep in effect, during any period such rate is in effect under such paragraph, a rate for such service which does not limit the liability of the carrier or freight forwarder.

[(c) A rail carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may establish rates for transportation of property under which the liability of the 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, and may provide in such written declaration or agreement for specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of such property.

[§ 10731. Investigation of discriminatory rail rates for transportation of recyclable or recycled materials

[(a) In this section—

[(1) "recyclable material" means material collected or recovered from waste for a commercial or industrial use whether the collection or recovery follows end usage as a product.

[(2) "virgin material" means raw material including previously unused metal or metal ore, woodpulp or pulpwood, textile fiber or material, or other resource that, through the application of technology, is or will become a source of raw material for commercial or industrial use.

[(b) When appropriate, the Interstate Commerce Commission shall—

[(1) investigate the rate structure for the transportation of recyclable or recycled materials and competing virgin material by rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title and the manner in which that rate structure has been affected by successive general rate increases approved by the Commission for those carriers;

[(2) determine whether those rate increases affect any part of the rate structure in violation of section 10701 or 10741 of this title and order the rate found to be in violation of either of those sections removed from the rate structure; and

[(3) report to the President and Congress, in each of the annual reports of the Commission for 1978 and 1979, and in other appropriate reports, all proceedings started or completed under this subsection.

[(c) A determination under subsection (b)(2) of this section may be made only after a public hearing. During the hearing, the rail carriers have the burden of proving that rate increases that affect the rate structure applicable to the transportation of those competing materials comply with section 10701 and 10741 of this title.

[(d) In cooperation with the Commission, the Secretary of Transportation shall maintain a research, development, and demonstration program to develop and improve transport terminal operations, transport service characteristics, transport equipment, and collection and processing methods to facilitate the competitive and efficient transportation of recyclable or recycled materials by rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

[(e) Notwithstanding any other provision of this subtitle or any other law, within 90 days after the effective date of the Staggers Rail Act of 1980, all rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall take all actions necessary to reduce and thereafter maintain rates for the transportation of recyclable or recycled materials, other than recyclable or recycled iron or steel, at revenue-to-variable cost ratio levels that are equal to or less than the average revenue-to-variable cost ratio that rail carriers would be required to realize, under honest, economical, and efficient management, in order 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 sufficient to attract and retain capital in amounts adequate to provide a sound transportation system in the United States. As long as any such rate equals or exceeds such average revenue-to-variable cost ratio established by the Commission, such rate shall not be required to bear any further rate increase. The Commission shall have jurisdiction to issue all orders necessary to enforce the requirements of this subsection.

[§ 10732. Food and grocery transportation

[(a) 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) 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.

[§ 10733. Rates for transportation of recyclable materials

[(a) A motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chap-

ter 105 of this title may provide transportation of recyclable materials without charge or at a reduced rate.

[(b) In this section, "recyclable materials" means waste products for recycling or reuse in the furtherance of recognized pollution control programs.

[§ 10734. Car utilization

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

[§ 10735. Household goods rates—estimates; guarantees of service

[(a)(1) Subject to the provisions of paragraph (2) of this subsection, a motor common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may, subject to the provisions of this chapter (including the general tariff requirements of section 10762 of this title), 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) 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)(1) Subject to the provisions of paragraph (2) of this subsection, a motor common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may, subject to the provisions of this chapter (including the general tariff requirements of section 10762 of this title) 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 but must be contained in the tariff the carrier publishes for such services under this subtitle.

[(2) Before a carrier may establish a rate for any service under paragraph (1) of this subsection, the Commission may require such carrier to have in effect and keep in effect, during any period such rate is in effect under such paragraph, a rate for such service which does not guarantee the pickup 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.

[SUBCHAPTER III—LIMITATIONS

[§ 10741. Prohibitions against discrimination by common carriers

[(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not charge or receive from a person a different compensation (by using a special rate, rebate, drawback, or another means) for a service rendered, or to be rendered, in transportation the carrier may perform under this subtitle 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. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates.

[(b) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title may not subject a person, place, port, or type of traffic to unreasonable discrimination. However, subject to subsection (c) of this section, this subsection does not apply to discrimination against the traffic of another carrier providing transportation by any mode.

[(c) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter may not subject a household goods freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter to unreasonable discrimination whether or not the household goods freight forwarder is controlled by that carrier.

[(d) Differences between the rates, classifications, rules, and practices of water and rail common carriers in effect for their respective types of transportation do not constitute a violation of this section or an unfair or destructive competitive practice under this subtitle.

[(e) Differences between rates, classifications, rules, and practices of rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title do not constitute a violation of this section if such differences result from different services provided by rail carriers.

[(f) This section shall not apply to—

[(1) contracts approved under section 10713 of this title, other than as provided in subsection (d)(2)(A)(ii) and (d)(2)(B) of such section;

[(2) surcharges or cancellations under section 10705a of this title;

[(3) separate rates for distinct rail services under section 10728 of this title;

[(4) rail rates applicable to different routes; or

[(5) expenses authorized under section 10751 of this title,

except that with respect to rates described in paragraphs (2), (3), and (4), nothing in this subsection shall affect the authority of the Commission under this section with respect to rate relationships between ports or within the same port.

[§ 10742. Facilities for interchange of traffic

[A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I or III of chapter 105 of this title 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 common carrier under either of those subchapters.

[§ 10743. Payment of rates

[(a) Except as provided in subsection (b) of this section, a common carrier (except a pipeline or sleeping car carrier) providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under this subtitle shall give up possession at destination of property transported by it only when payment for the transportation or service is made.

[(b)(1) Under regulations of the Commission 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 Commission may provide for weekly or monthly payment for transportation provided by motor common carriers and for periodic payment for transportation provided by water common carriers.

[(2) Such a carrier (including a motor common 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.

[§ 10744. 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, motor, or water common carrier under this subtitle. 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—

[(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 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, 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 or express carrier under this subtitle. When the shipper or consignor gives written notice, before delivery of the property, to the line-haul 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 clause (2) of this subsection on delivery. However, if the party gives written notice to the delivering carrier before delivery that the party is not the beneficial owner of the property and gives the 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 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 carrier must bring the action during the period provided in section 11706(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 water common carrier may bring an action to enforce liability under subsection (a) of this section. That carrier must bring the action by the end of the 2d year after the claim accrues or by end of the 6th month after final judgment against it in an action against the consignee or beneficial owner named by the consignee by the end of that 2-year period.

[(3) A rail or express 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 11706(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.

[§ 10745. Continuous carriage of freight

[A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter

I of chapter 105 of this title 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 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 subtitle.

[§ 10746. Transportation of commodities manufactured or produced by a rail carrier

[A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not transport from a State or territory or possession of the United States to another State, territory, or possession or a foreign country, an article or commodity that—

[(1) is manufactured, mined, or produced by the carrier or under its authority; or

[(2) is owned by the carrier or in which it has an interest.

However, a rail carrier may transport such an article or commodity when it is necessary and intended for use in the business of that carrier. This section does not apply to timber and products manufactured from timber.

[§ 10747. Transportation services or facilities furnished by shipper

[A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title may publish in a tariff filed with the Commission under subchapter IV of this chapter 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 Commission may prescribe the maximum reasonable charge or allowance a carrier subject to its jurisdiction may pay for a service or instrumentality furnished under this section. The Commission may begin a proceeding under this section on its own initiative or on application.

[§ 10748. Transportation of livestock by rail carrier

[(a) Transportation entirely by railroad of ordinary livestock in carload lots to public stockyards shall include necessary services of unloading and reloading in route, delivery of inbound shipments at those stockyards into suitable pens, and receiving and loading outbound shipments at those stockyards. A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may charge a shipper, consignee, or owner an extra amount for those services only if, under Commission regulations, the unloading or reloading in route is at the request of the shipper, consignee, or owner, to try an intermediate market, or to comply with quarantine regulations.

[(b) Subsection (a) of this section does not affect the duties and liabilities of a rail carrier in existence on February 28, 1920, under a law related to the transportation of other than ordinary livestock or the duty of providing transportation for shipments other than shipments to or from public stockyards.

[§ 10749. Exchange of services and limitation on use of common carriers by household goods freight forwarders

[(a) A common carrier, or a motor contract carrier of property providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title may contract with a telephone, telegraph, or cable company to exchange services.

[(b) A household goods freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title may use a carrier, including a carrier referred to in this subsection, to transfer, collect, or deliver in a terminal area. However, to provide other services, a household goods freight forwarder may only use—

[(1) a rail, express, motor, or water common carrier, or a motor contract carrier of property providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title including—

[(A) a motor common carrier providing exempt transportation under section 10525 or 10526(a)(8) of this title; or

[(B) a water common carrier providing exempt transportation under section 10542(a) of this title or transportation between places in Alaska or Hawaii and between those places and other places in the United States; or

[(2) an air carrier subject to the jurisdiction of the Secretary of Transportation under part A of subtitle VII of this title.

[§ 10750. Demurrage charges

[A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title 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.

[§ 10751. Business entertainment expenses

[(a) Any business entertainment expense incurred by a person providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title shall not constitute a violation of section 10741 or 10761 of this title if such expense would not be unlawful if incurred by a person or corporation not subject to such jurisdiction of the Commission.

[(b) Any business entertainment expense authorized under this section that is paid or incurred by a person providing transportation subject to the jurisdiction of the Commission under chapter

105 of this title shall not be taken into account in determining the cost of service or the rate base for purposes of this subtitle.

[(c) Within 180 days after the date of enactment of the Motor Carrier Act of 1980, the Commission shall institute a rulemaking proceeding pursuant to which it shall issue rules establishing appropriate standards and guidelines for authorized business entertainment expenses under this section. Such standards and guidelines shall be consistent with standards and guidelines applicable under existing law to persons not subject to this subtitle, including competing unregulated surface transportation carriers.

[SUBCHAPTER IV—TARIFFS AND TRAFFIC

[§ 10761. Transportation prohibited without tariff

[(a) Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (excluding a motor common carrier providing transportation of property, other than household goods, under an individually determined rate, classification, rule, or practice, as defined in section 10102(13) or in noncontiguous domestic trade) shall provide that transportation or service only if the rate for the transportation or service is contained in a tariff that is in effect under this subchapter, except that a motor carrier of property the application of whose rates is determined or governed by a tariff on file with the Commission cannot collect its rates unless the carrier is a participant in those tariffs. A carrier subject to this subsection may not charge or receive a different compensation for that 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, except that a motor carrier of property the application of whose rates are determined or governed by a tariff on file with the Commission shall issue a power of attorney to the tariff publishing agent of such tariff and, upon its acceptance, the agent shall issue a notice to the participating carrier certifying its continuing participation in such tariff, which certification shall be kept open for public inspection.

[(b) The Commission may grant relief from subsection (a) of this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

[(c) This section shall not apply to expenses authorized under section 10751 of this title.

[§ 10762. General tariff requirements

[(a)(1) A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (except a motor common carrier) shall publish and file with the Commission tariffs containing the rates and (A) if a common carrier, classifications, rules and practices related to those

rates, and (B) if a contract carrier, rules and practices related to those rates, established under this chapter for transportation or service it may provide under this subtitle. A motor common carrier (excluding a motor common carrier providing transportation of property, other than household goods, under an individually determined rate, classification, rule, or practice, as defined in section 10102(13), or in noncontiguous domestic trade) shall publish and file with the Commission tariffs containing the rates for transportation it may provide under this subtitle. The Commission may prescribe other information that motor common carriers (excluding a motor common carrier providing transportation of property, other than household goods, under an individually determined rate, classification, rule, or practice, as defined in section 10102(13), or in noncontiguous domestic trade) shall include in their tariffs. A motor contract carrier of property is not required to publish or file actual or minimum rates under this subtitle. Except as provided in the Negotiated Rates Act of 1993 and the amendments made by that Act, nothing in the Trucking Industry Regulatory Reform Act of 1994 (and the amendments made by that Act) creates any obligation for a shipper based solely on a rate that was on file with the Commission or elsewhere on the date of enactment of such Act.

[(2) Carriers that publish tariffs under paragraph (1) of this subsection shall keep them open for public inspection. A rate contained in a tariff filed by a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 shall be stated in money of the United States. A tariff filed by a motor or water contract carrier or by a household goods freight forwarder providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of that chapter, respectively, may not become effective for 30 days after it is filed.

[(3) A motor common carrier of property (other than a motor common carrier providing transportation of household goods or 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 agreed to between the shipper and carrier may have been based. When the applicability or reasonableness of the rates and related provisions billed by a motor common carrier is challenged by the person paying the freight charges, the Commission shall determine whether such rates and provisions are reasonable or applicable based on the record before it. In those cases where a motor common carrier (other than a motor common 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 Commission 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 original bill in order to have the right to collect such charges.

[(4) If a shipper seeks to contest the charges originally billed, the shipper may request that the Commission determine whether the charges originally billed must be paid. A shipper must contest the

original bill within 180 days in order to have the right to contest such charges.

[(5) Any tariff on file with the Commission on the date of enactment of the Trucking Industry Regulatory Reform Act of 1994 not required to be filed with the Commission after the enactment of that Act is null and void beginning on that date.

[(b)(1) The Commission shall prescribe the form and manner of publishing, filing, and keeping tariffs open for public inspection under this section. The Commission may prescribe specific charges to be identified in a tariff published by a common carrier providing transportation or service subject to its jurisdiction under subchapter I, III, or IV of that chapter, but those tariffs must identify plainly—

[(A) the places between which property and passengers will be transported;

[(B) terminal, storage, and icing charges (stated separately) if a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter;

[(C) terminal charges if a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter III or IV of that chapter;

[(D) privileges given and facilities allowed; and

[(E) any rules that change, affect, or determine any part of the published rate.

[(2) A joint tariff filed by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter shall identify the carriers that are parties to it. The carriers that are parties to a joint tariff, other than the carrier filing it, must file a concurrence or acceptance of the tariff with the Commission but are not required to file a copy of the tariff. The Commission may prescribe or approve what constitutes a concurrence or acceptance.

[(c)(1) When a common carrier (excluding a motor common carrier providing transportation of property other than household goods, under an individually determined rate, classification, rule, or practice defined in section 10102(13), or in a noncontiguous domestic trade) providing transportation or service subject to the jurisdiction of the Commission (A) under subchapter I of chapter 105 of this title proposes to change a rate, or (B) under another subchapter of that chapter proposes to change a rate, classification, rule, or practice, the carrier shall publish, file, and keep open for public inspection a notice of the proposed change as required under subsections (a) and (b) of this section.

[(2) When a contract carrier (except a motor contract carrier of property) providing transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title proposes to establish a new rate or to reduce a rate, directly or by changing a rule or practice related to the rate or the value of service under the rate, the carrier shall publish, file, and keep open for public inspection a notice of the new or reduced rate as required under subsections (a) and (b) of this section.

[(3) A notice filed under this subsection shall plainly identify the proposed change or new or reduced rate and indicate its proposed effective date. In the case of a carrier other than a rail carrier, a

proposed rate change or a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section. In the case of a rail carrier and motor common carrier of passengers with respect to special or charter transportation, a proposed rate change resulting in an increased rate or a new rate shall not become effective for 20 days after the notice is published and a proposed rate change resulting in a reduced rate shall not become effective for 10 days after the notice is published, except that a contract authorized under section 10713 of this title shall become effective in accordance with the provisions of such section. In the case of a motor common carrier of passengers, a proposed rate change resulting in an increased rate or a new rate applicable to special or charter transportation shall not become effective for 30 days after the notice is published, and a proposed rate change resulting in a reduced rate applicable to special or charter transportation shall not become effective for 10 days after the notice is published.

[(d)(1) The Commission may reduce the notice period of subsections (a) and (c) of this section if cause exists. The Commission may change the other requirements of this section if cause exists in particular instances or as they apply to special circumstances.

[(2) The commission may prescribe regulations for the simplification of tariffs by carriers providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title and permit them to change rates, classifications, rules, and practices without filing complete tariffs that cover matter that is not being changed when the Commission finds that action to be consistent with the public interest. Those carriers may publish new tariffs that incorporate changes or plainly indicate the proposed changes in the tariffs then in effect and kept open for public inspection. However, the Commission shall require that all rates of rail carriers and rail rate-making associations be incorporated in their individual tariffs by the end of the 2d year after initial publication of the rate, or by the end of the 2d year after a change in a rate becomes effective, whichever is later. The Commission may extend those periods if cause exists, but if it does, it must send a notice of the extension and a statement of the reasons for the extension to Congress. A rate not incorporated in an individual tariff as required by the Commission is void.

[(e) The Commission may reject a tariff submitted to it by a common carrier under this section if that tariff violates this section or regulation of the Commission carrying out this section.

[(f) The Commission may grant relief from this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

[(g) The Commission shall streamline and simplify, to the maximum extent practicable, the filing requirements applicable under this section to motor common carriers of property with respect to transportation provided under certificates to which the provisions of section 10922(b)(4)(E) of this title apply and to motor contract

carriers of property with respect to transportation provided under permits to which the provisions of section 10923(b)(5) of this title apply.

[(h) CUSTOMER ACCOUNT CODES.—No tariff filed by a motor carrier of property with the Commission before, on, or after the date of the enactment of this subsection may be held invalid solely on the basis that a numerical or alpha account code is used in such tariff to designate customers or to describe the applicability of rates. For transportation performed on and after the 180th day following such date of enactment, the name of the customer for each account code must be set forth in the tariff (other than the tariff of a motor carrier providing transportation of household goods).

[(i) RANGE TARIFFS.—No tariff filed by a motor carrier of property with the Commission before, on, or after the date of the enactment of this subsection may be held invalid solely on the basis that the tariff does not show a specific rate or discount for a specific shipment if the tariff is based on a range of rates or discounts for specific classes of shipments. For transportation performed on or after the 180th day following such date of enactment, such a range tariff must identify the specific rate or discount from among the range of rates or discounts contained in such range tariff which is applicable to each specific shipment or must contain an objective means for determining the rate.

[(j) Nothing in this section shall affect the application of the provisions of the Negotiated Rates Act of 1993 (or the amendments made by that Act) to undercharge claims for transportation provided prior to the date of enactment of the Trucking Industry Regulatory Reform Act of 1994.

[§ 10763. Designation of certain routes by shippers or Interstate Commerce Commission

[(a)(1) When a person delivers property to a rail carrier for transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, the person may direct the 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 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 carrier is a party to those routes and rates.

[(2) A 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 carrier, that carrier must also receive and transport it according to the routing instructions and deliver it to the next succeeding carrier or consignee according to the instructions.

[(b) If no direction is made under subsection (a) of this section, the Commission may designate the route over which the property

may be transported after arrival at the end of the route of one carrier or at a junction with the route of another carrier when the property is to be delivered to another carrier for further transportation. The Commission may act under this subsection when the public interest and a fair distribution of traffic require that action.

[(c) The Commission may prescribe exceptions to the authority of a person to direct the movement of traffic under subsection (a) of this section.

[§ 10764. Arrangements between carriers: copy to be filed with Interstate Commerce Commission

[(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall file with the Commission a copy of each arrangement related to transportation affected by this subtitle that the carrier has with another common carrier. The Commission may require other carriers and brokers subject to its jurisdiction under chapter 105 to file a copy of each arrangement related to transportation or service affected by this subtitle that they have with other persons.

[(2) When the Commission finds that filing a class of arrangements by a carrier subject to its jurisdiction under subchapter I of that chapter is not necessary in the public interest, the Commission may except the class from paragraph (1) of this subsection.

[(b) The Commission may disclose the existence or contents of an arrangement between a contract carrier and a shipper filed under subsection (a) of this section only if the disclosure is—

[(1) limited to those parts of the arrangement that are necessary to indicate the extent of its failure to conform to a tariff then in effect under section 10762 of this title; or

[(2) consistent with the public interest and made as a part of the record in a formal proceeding.

[§ 10765. Water transportation under arrangements with certain other carriers

[(a) The Interstate Commerce Commission may require a common carrier providing transportation or service subject to its jurisdiction under chapter 105 of this title that makes an arrangement with a water carrier (whether or not subject to its jurisdiction under this subtitle) providing transportation from a port in the United States to another country for the through transportation of property from a place in the interior of the United States to another country to make similar arrangements with steamship lines that provide transportation from that port to that country.

[(b) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that transports property from a place in the United States through another country to a place in the United States shall publish and keep open for public inspection tariffs as required under section 10762 of this title. The tariffs shall identify the through rate established for that transportation to the United States from another country to which the carrier accepts property for shipment from the United States. Unless the through rates are available for public inspection under that section, the property is subject to customs du-

ties applicable to property produced in another country before the property may be admitted to the United States.

[§ 10766. Freight forwarder traffic agreements

[(a) A household goods freight forwarder providing service subject to the jurisdiction of the Interstate Commerce Commission under subchapter IV of chapter 105 of this title may agree with another household goods freight forwarder to load traffic jointly between places served under this subtitle. However, the Commission may cancel, suspend, or require changes in the agreement when the Commission finds the agreement is inconsistent with the transportation policy of section 10101 of this title.

[(b) A freight forwarder providing service subject to the jurisdiction of the Commission under that subchapter may contract with motor common carriers, and motor contract carriers of property, providing transportation subject to the jurisdiction of the Commission under subchapter II of that chapter, to provide transportation for the forwarder. A copy of that contract must be filed with the Commission. The contract may govern use by the household goods freight forwarder of the services and instrumentalities of the motor common carrier or the motor contract carrier of property and the compensation to be paid for the transportation. However, the parties to a contract must establish reasonable conditions and compensation that are consistent with the transportation policy of section 10101 of this title and do not unreasonably discriminate against a party or another household goods freight forwarder. When the Commission finds that a contract, or its conditions or compensation, under this subsection is or will be inconsistent with this subsection, the Commission shall prescribe consistent conditions and compensation.

[(c) AUTHORITY OF FREIGHT FORWARDERS TO ENTER INTO CONTRACTS.—A freight forwarder (other than a household goods freight forwarder) providing service which, on the day before the date of the enactment of the Surface Freight Forwarder Deregulation Act of 1986, would have been service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title may contract with—

[(1) a rail carrier,

[(2) a water common carrier providing transportation subject to the Shipping Act, 1916 (46 U.S.C. App. 801–842) or the Intercoastal Shipping Act, 1933 (46 U.S.C. App. 843–848),

[(3) a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of such chapter,

[(4) a motor contract carrier of property providing transportation subject to the jurisdiction of the Commission under such subchapter II, and

[(5) a shipper.

[(d) The Commission may begin a proceeding under this section on its own initiative or on complaint.

[§ 10767. Billing and collecting practices

[(a) REGULATIONS LIMITING REDUCED RATES.—Not later than 120 days after the date of the enactment of this section, the Com-

mission shall issue regulations that prohibit a motor carrier subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title from providing a reduction in a rate set forth in its tariff or contract for the provision of transportation of property to any person other than (1) the person paying the motor carrier directly for the transportation service according to the bill of lading, receipt, or contract, or (2) an agent of the person paying for the transportation.

[(b) DISCLOSURE OF ACTUAL RATES, CHARGES, AND ALLOWANCES.—The regulations of the Commission issued pursuant to this section shall require a motor carrier to disclose, when a document is presented or transmitted electronically 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 the transportation service and shall prohibit any person from causing 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. Where 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 for the payment that a reduction, allowance, or other adjustment may apply.

[(c) PAYMENTS OR ALLOWANCES FOR CERTAIN SERVICES.—The regulations issued by the Commission pursuant to this section shall not prohibit a motor carrier from making payments or allowances to a party to the transaction for services that would otherwise be performed by the motor carrier, such as a loading or unloading service, if the payments or allowances are reasonably related to the cost that such party knows or has reason to know would otherwise be incurred by the motor carrier.

[SUBCHAPTER V—VALUATION OF PROPERTY

[§ 10781. Investigation and report by Interstate Commerce Commission

[(a) The Interstate Commerce Commission shall investigate, establish, and report the value of all property owned or used by each carrier providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title, except a street, suburban, or interurban electric rail carrier not operated as a part of a general railroad system of transportation. However, the Commission may investigate, establish, and report the value of property owned or used by such an electric rail carrier when the Commission decides that action is desirable in the public interest. When the Commission makes an investigation required to be made under this section, it must—

[(1) inventory and list the property of that carrier in detail;

[(2) indicate the value established under section 10782 of this title for that property; and

[(3) classify the physical property under classifications that conform, as nearly as practicable, to the classification of ex-

penditures prescribed by the Commission for railroads and equipment.

[(b) Except as provided in subsection (a) of this section, the Commission may prescribe—

[(1) the procedure to be followed when conducting an investigation under this subchapter;

[(2) the form in which to submit the results of the valuation; and

[(3) the classification of the elements that make up the established value.

The report for each investigation conducted under this subchapter shall indicate the value of the property of each common carrier as a whole and separately identify the value of its property in each State and territory and possession of the United States in which the property is located.

[§ 10782. Requirements for establishing value

[(a) In carrying out an investigation of a common carrier required under section 10781 of this title, the Interstate Commerce Commission shall—

[(1) establish, for each piece of property except land owned or used by the carrier as a common carrier, the original cost to date, cost of reproduction new and cost of reproduction less depreciation, and analyze the methods used to establish those costs and the reasons for differences among them;

[(2) establish other values, and elements of value, of that property and analyze the methods used to establish them and the reasons for differences between them and the cost values established under clause (1) of this subsection;

[(3) establish separately from improvements, the original cost on the date of dedication to public use, of all lands, rights of way, and terminals owned or used by the carrier as a common carrier and establish their current value;

[(4) identify property not held by the carrier as a common carrier, its original cost, and current value and analyze the methods of valuation used;

[(5) establish the amount and value of assistance or grant of right of way made to the carrier, or to a previous corporation that operated its property, by the United States Government or by a State, county, or municipal government, or by an individual, association, or corporation and the amount and value of any concession and allowance made by the United States Government or another of those governments in consideration of that assistance; and

[(6) identify the grants of land to that carrier, or to a previous corporation that operated its property, by the United States Government, or by a State, county, or municipal government, the amount of money derived from the sale of part of those grants, the value of the unsold parts (established as of the date acquired and currently), and the amount and value of any concession and allowance made by the carrier to the United States Government, or another of those governments, in consideration of that assistance or grant of land.

[(b) The Commission may prescribe elements to consider in establishing the cost to date of property owned or used by a carrier. However, in establishing that cost, the Commission shall investigate and include in those elements—

[(1) the history and organization of the corporation that currently operates the property and of previous corporations that also operated that property;

[(2) increases or decreases of securities during reorganization of that corporation or such a previous corporation;

[(3) money received through the issuance of securities by that corporation or such a previous corporation;

[(4) syndicating, banking, and other financial arrangements under which those securities were issued and the expenses thereof;

[(5) the net and gross earnings of those corporations; and

[(6) the expenditure of all money and the purposes of those expenditures in as much detail as the Commission determines to be necessary.

[§ 10783. Cooperation and assistance of carriers

[(a) Each common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall cooperate with and assist the Commission in valuing property under this subchapter. The Commission may order those carriers to—

[(1) give to the Commission maps, profiles, contracts, engineering reports, and other records to assist it in investigating and establishing the value of that carrier's property; and

[(2) assist the Commission in valuing property under this subchapter in other ways, including giving its agents free access to its right-of-way, property, and records on request.

[(b) A rail carrier whose property is being valued under this subchapter shall—

[(1) transport employees of the United States Government who are making surveys and other examinations of the physical property of that carrier in the course of that valuation when reasonably required by them in the actual discharge of their duties;

[(2) transport and store the cars of the United States Government that are used to house and maintain those employees when reasonably required during the valuation; and

[(3) transport supplies necessary to maintain those employees and the property of the United States Government actually used on the railroad during the valuation.

[(c) The transportation required to be provided under subsection (b) of this section is considered a special service for which the Commission may prescribe the compensation to be paid. A rail carrier shall give the Commission an accurate accounting of the transportation provided under this section when required by the Commission.

[(d) The Commission shall keep records compiled under this subchapter open for public inspection. However, the Commission may order those records closed to the public, but must state its reasons for closing them.

[§ 10784. Revision of property valuations

[(a) When the Interstate Commerce Commission completes an initial valuation of property under this subchapter, it shall keep itself informed of new construction, changes in condition, quantity, use, and classification of property on which an initial valuation was made and the cost of all improvements to, and changes in investment, in that property. The Commission may keep itself informed of current changes in costs and values of railroad property to carry out this section. When necessary, the Commission may correct, revise, and supplement an inventory or valuation of property it has made.

[(b) The Commission may order a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to give it reports and information needed to carry out this section.

[§ 10785. Finality of valuation: notice, protest, and review

[(a) The Interstate Commerce Commission shall notify the carrier, the Attorney General, and the chief executive officer of each State in which property being valued under this subchapter is located, of the completion of a tentative valuation of that property. The Commission may also notify other parties. The notice must be sent by certified mail and must indicate the valuation established for each of that carrier's classes of property. A valuation of property under this subchapter becomes final if a protest is not filed within 30 days after notice of the tentative valuation of that property is given. When the tentative valuation becomes final under this subsection, the effective date is the date of the tentative valuation.

[(b) When a carrier files a protest of a tentative valuation, the Commission shall begin a proceeding to consider the protest. If the Commission decides that a tentative valuation should be changed, it may make the necessary changes. The tentative valuation, as changed, becomes final and is effective on the date of the final action of the Commission under this subsection.

[(c) The Commission shall publish final valuations and classifications of property established under this subchapter. A final valuation or classification that has become effective under this subchapter is prima facie evidence of the value of the property in a proceeding under this subtitle and in a judicial proceeding to enforce, enjoin, set aside, annul, or suspend an action of the Commission.

[(d) When evidence is introduced at the trial of an action involving a final valuation of property established by the Commission and found by the court to be different from the evidence offered to the Commission during a proceeding under subsection (b) of this section or in addition to that evidence and substantially affecting the valuation, the court shall send a copy of that evidence to the Commission and stay further proceedings in the action. The court may determine the duration of the stay of proceedings. The Commission shall consider the evidence and may change the final valuation established under this subchapter. The Commission shall complete its action and report to the court in the time determined by the court. If the Commission changes the valuation, the court must substitute the valuation as changed for the original valuation

and give its judgment on the substituted valuation. If the Commission does not change the original valuation, the court must give judgment on the original valuation.

[§ 10786. Applicability

[In addition to common carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, this subchapter applies to receivers and operating trustees of those carriers.

[CHAPTER 109—LICENSING

[SUBCHAPTER I—RAILROADS AND FERRIES

[Sec.
[10901. Authorizing construction and operation of railroad lines.
[10902. Authorizing action to provide adequate, efficient, and safe facilities.
[10903. Authorizing abandonment and discontinuance of railroad lines and rail transportation.
[10904. Filing and procedure for applications to abandon or discontinue.
[10905. Offers of financial assistance to avoid abandonment and discontinuance.
[10906. Offering abandoned rail properties for sale for public purposes.
[10907. Exceptions.
[10908. Discontinuing or changing interstate train or ferry transportation subject to State law.
[10909. Discontinuing or changing train or ferry transportation in one State.
[10910. Railroad development.

[SUBCHAPTER II—OTHER CARRIERS AND MOTOR CARRIER BROKERS

[10921. Requirement for certificate, permit, or license.
[10922. Certificates of motor and water common carriers.
[10923. Permits of motor and water contract carriers and household goods freight forwarders.
[10924. Licenses of motor carrier brokers.
[10925. Effective periods of certificates, permits, and licenses.
[10926. Transfers of certificates and permits.
[10927. Security of motor carriers, brokers, and freight forwarders.
[10928. Temporary authority for motor and water carriers.
[10929. Temporary authority for previously exempt water transportation.
[10930. Limitations on certificates and permits.
[10931. Motor common carriers providing transportation entirely in one State.
[10932. Motor carrier savings provisions.
[10933. Authorizing abandonment of household goods freight forwarder service.
[10934. Household goods agents.
[10935. Discontinuing bus transportation in one State.
[10936. Limitation on State regulation of intrastate passengers by bus.

[SUBCHAPTER I—RAILROADS AND FERRIES

[§ 10901. Authorizing construction and operation of railroad lines

[(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may—

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

[(2) construct an additional railroad line;

[(3) acquire or operate an extended or additional railroad line; or

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

only if the Commission finds that the present or future public convenience and necessity require or permit the construction or acquisition (or both) and operation of the railroad line.

[(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Commission shall—

[(1) send a copy of the application to the chief executive officer of each State that would be directly affected by the construction or operation of the railroad line;

[(2) send an accurate and understandable summary of the application to a newspaper of general circulation in each area that would be affected by the construction or operation of the railroad line;

[(3) have a copy of the summary published in the Federal Register;

[(4) take other reasonable and effective steps to publicize the application; and

[(5) indicate in each transmission and publication that each interested person is entitled to recommend to the Commission that it approve, deny, or take other action concerning the application.

[(c)(1) If the Commission—

[(A) finds public convenience and necessity, it may—

[(i) approve the application as filed; or

[(ii) approve the application with modifications and require compliance with conditions the Commission finds necessary in the public interest; or

[(B) fails to find public convenience and necessity, it may deny the application.

[(2) On approval, the Commission shall issue to the rail carrier a certificate describing the construction or acquisition (or both) and operation approved by the Commission.

[(d)(1) Where a rail carrier has been issued a certificate of public convenience and necessity by the Commission authorizing the construction or extension of a railroad line, no other rail carrier may block such construction or extension 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 carriers 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 Commission for determination.

[(e) The Commission may require any rail carrier proposing both to construct and operate a new railroad line pursuant to this section to provide a fair and equitable arrangement for the protection of the interests of railroad employees who may be affected thereby no less protective of and beneficial to the interests of such employees than those established pursuant to section 11347 of this title.

[§ 10902. Authorizing action to provide adequate, and safe facilities

[The Interstate Commerce Commission may authorize a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to take action necessary to provide adequate, efficient, and safe facilities to enable the rail carrier to perform its obligations under this subtitle, including extension of any of the carrier's railroad lines after issuance of a certificate under section 10901 of this title. The Commission may authorize a rail carrier to act under this section only if it finds that the expense involved will not impair the ability of the carrier to perform its obligations to the public. The Commission may conduct a proceeding on its own initiative or on application of an interested party.

[§ 10903. Authorizing abandonment and discontinuance of railroad lines and rail transportation

[(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title 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 Commission finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Commission shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

[(b)(1) Subject to sections 10904–10906 of this title, if the Commission—

[(A) finds public convenience and necessity, it shall—

[(i) approve the application as filed; or

[(ii) approve the application with modifications and require compliance with conditions that the Commission finds are required by public convenience and necessity; or

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

[(2) On approval, the Commission shall issue to the rail carrier a certificate describing the abandonment or discontinuance approved by the Commission. Each certificate shall also contain provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under sections 11347 and 24706(c) of this title.

[§ 10904. Filing and procedure for applications to abandon or discontinue

[(a)(1) An application for a certificate of abandonment or discontinuance under section 10903 of this title, and a notice of intent to abandon or discontinue, must be filed with the Interstate Commerce Commission.

[(2) When a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title files an application and notice of intent, the notice shall include—

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

[(B) a statement indicating that each interested person is entitled to recommend to the Commission that it approve, deny, or take other action concerning the application; and

[(C)(i) a statement that the line is available for subsidy or sale in accordance with section 10905 of this title, (ii) a statement that the carrier will promptly provide to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation, calculated in accordance with section 10905 of this title and (iii) the name and business address of the person who is authorized to discuss sale or subsidy terms for the carrier.

[(3) The rail carrier shall—

[(A) send by certified mail a copy of the notice of intent 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 Commission) of the railroad line during the 12 months preceding the filing of the application; and

[(E) attach to the notice filed with the Commission an affidavit certifying the manner in which clauses (A)–(D) of this paragraph have been satisfied, and certifying that clauses (A)–(D) have been satisfied within the most recent 30 days prior to the date the application is filed.

[(b) If no protest is received within 30 days after the application is filed, the Commission shall find that the public convenience and necessity require or permit the abandonment or discontinuance. In such a case, the Commission shall, within 45 days after the application is filed, issue a certificate which permits the abandonment or discontinuance to occur within 75 days after the application is filed.

[(c)(1) If a protest is received within 30 days after the application is filed, the Commission shall, within 45 days after the application is filed, determine whether an investigation is needed to assist in determining what disposition to make of the application.

[(2) If the Commission decides that no investigation is to be undertaken, the Commission shall, within 75 days after the application is filed, decide whether the present or future public convenience and necessity require or permit the abandonment or discontinuance, taking into consideration the application of the rail carrier and any materials submitted by protestants. If the Commission finds that the present or future public convenience and necessity require or permit the abandonment, it shall, within 90 days after the date of application, issue a certificate which permits the

abandonment or discontinuance to occur within 120 days after the application is filed.

[(3) If the Commission decides that an investigation should be undertaken under this section, the investigation must be completed within 135 days, and an initial decision must be rendered within 165 days, after the date the application is filed. Thirty days after such decision, the initial decision shall become the final decision of the Commission unless, during the interim, the Commission decides to hear appeals. If an initial decision is appealed and considered by the Commission, the Commission shall issue a final decision within 255 days after the date of application. Whenever the Commission decides upon investigation that the present or future public convenience and necessity require or permit the abandonment or discontinuance of rail service, it shall, within 15 days of the final decision, issue a certificate which permits the abandonment or discontinuance to occur within 75 days of the date of the final decision.

[(4) The effective date of any certificate which permits abandonment or discontinuance may be stayed by the Commission pursuant to the provisions of section 10905 of this title.

[(d)(1) The burden is on the person applying for the certificate to prove that the present or future public convenience and necessity require or permit the abandonment or discontinuance.

[(2) For applications approved by the Secretary of Transportation as part of a plan or proposal under section 333(a)–(d) of this title, the Commission shall consider whether any detriment from the abandonment or discontinuance exceeds the transportation benefit from the plan or proposal as a whole.

[(e)(1) In this subsection, "potentially subject to abandonment" has the meaning given the term in regulations of the Commission. 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 carrier. The carrier shall submit to the Commission 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 carrier plans to file an application for a certificate under subsection (a) of this section.

[(3) If an application for a certificate is opposed by—

[(A) a shipper or other person that has made significant use (as determined by the Commission) of the railroad line involved in the proposed abandonment or discontinuance during the 12-month period before the filing of the application for a certificate; or

[(B) a State or political subdivision of a State in which any part of the railroad line is located;

the Commission may issue a certificate under section 10903 of this title only if the railroad line has been described and identified in the diagram or amendment to the diagram of the rail carrier that was submitted to the Commission at least 4 months before the date

on which the application was filed, except that the requirement of such description or identification in such diagram may be waived by the Commission if the application was approved by the Secretary of Transportation as part of a plan or proposal under section 333(a)–(d) of this title, or the application is filed by a railroad in bankruptcy.

[§ 10905. Offers of financial assistance to avoid abandonment and discontinuance

[(a) In this section—

[(1) "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.

[(2) "reasonable return" means—

[(A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Interstate Commerce Commission; and

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

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

[(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 Commission may deem necessary to allow a potential offeror to calculate an adequate subsidy or purchase offer.

[(c) When the Commission finds under section 10903 of this title that the public convenience and necessity require or permit abandonment or discontinuance of a particular railroad line, it shall, concurrently with service of the decision upon the parties, publish the finding in the Federal Register. Within 10 days following the

publication, any person may offer to pay the carrier a subsidy or offer to purchase the line. Such offer shall be filed concurrently with the Commission. If the offer to subsidize or purchase the line is less than the carrier's estimate provided under subsection (b)(1) of this section, the offer shall explain the basis of the disparity, and the manner in which the offer of subsidy or purchase is calculated.

[(d) If, within 15 days after the publication required in subsection (c) of this section, the Commission finds that—

[(1) a financially responsible person (including a governmental authority) has offered financial assistance to enable the rail transportation to be continued over that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued; and

[(2) it is likely that the assistance would be equal to—

[(A) 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; or

[(B) the acquisition cost of that part of the railroad line;

the Commission shall postpone the issuance of a certificate authorizing abandonment or discontinuance in accordance with subsections (e) and (f) of this section.

[(e) If the carrier and a person offering financial assistance enter into an agreement which will provide continued rail service, the Commission shall postpone the issuance of the certificate for so long as the agreement, or an extension or modification of the agreement, is in effect. If the carrier and a person offering to purchase a line enter into an agreement which will provide continued rail service, the Commission shall approve the transaction and dismiss the application for abandonment or discontinuance. If the 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 Commission establish the conditions and amount of compensation. If no agreement is reached within 30 days after the offer is made and neither party requests that the Commission establish the conditions and amount of compensation during that same period, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance.

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

[(A) the Commission shall render its decision within 60 days;

[(B) where subsidy has been offered, the Commission shall determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line; and

[(C) where an offer of purchase has been made in order to continue rail service on the line, the Commission shall determine the price and other terms of sale. In no case shall the Commission 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).

[(2) The decision of the Commission 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 Commission's decision. In such a case, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance, unless other offers are being considered pursuant to paragraph (3) of this subsection.

[(3) If a carrier receives more than one offer to purchase or subsidize, it shall select the offeror with whom it wishes to transact business, and complete the sale or subsidy agreement, or request that the Commission establish the conditions and amount of compensation prior to the 40th day after the date on which notice was published under subsection (c) of this section. If no agreement on subsidy or sale is reached within the 40-day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request that the Commission establish the conditions and amount of compensation. If the Commission has established the conditions and amount of compensation and the original offer has been withdrawn, any other offeror may accept the Commission's decision within 20 days of such decision, and the Commission shall require the carrier to enter into a sale or subsidy agreement with such offeror, if such sale or agreement incorporates the Commission's decision.

[(4) 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 carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

[(5) Any subsidy provided under this section may be discontinued on notice of 60 days. Unless, within such 60-day period, another financially responsible party enters into a subsidy agreement at least as beneficial to the carrier as that which was or was to be discontinued, the Commission shall, at the carrier's request, immediately issue a certificate authorizing the abandonment or discontinuance of service on the line.

[§ 10906. Offering abandoned rail properties for sale for public purposes

[When the Interstate Commerce Commission finds under section 10903 of this title that the present or future public convenience and necessity require or permit abandonment or discontinuance, the Commission shall find further whether the rail properties that are involved in the proposed abandonment or discontinuance are suitable for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Commission finds that the rail properties proposed to be abandoned are suitable for public purposes, the properties may be sold, leased, exchanged, or otherwise disposed of only under conditions provided in the order of the Commission. 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.

[§ 10907. Exceptions

[(a) Notwithstanding sections 10901 and 10902 and subchapter III of chapter 113 of this title, and without the approval of the Interstate Commerce Commission, a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

[(b) The Commission does not have authority under sections 10901–10906 of this title over—

[(1) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks if the tracks are located, or intended to be located, entirely in one State; or

[(2) a street, suburban, or interurban electric railway that is not operated as part of a general system of rail transportation.

[§ 10908. Discontinuing or changing interstate train or ferry transportation subject to State law

[(a) When a discontinuance or change in any part of the transportation of a train or ferry operating between a place in a State and a place in another State—

[(1) is proposed by a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title; and

[(2) is subject to the law of a State, or to a regulation or order of, or proceeding pending before, a court or other authority of a State;

the carrier, notwithstanding that law, regulation, order, or proceeding, may discontinue or change the transportation—

[(A) if it files a notice of the proposed discontinuance or change with the Commission at least 30 days before the discontinuance or change is intended to be effective and carries out the discontinuance or change under that notice;

[(B) if it mails a copy of the notice to the chief executive officer of each State in which the train or ferry is operated and posts a copy of the notice at each station, depot, or other facility served by the train or ferry; and

[(C) except as otherwise provided by the Commission under this section.

[(b) On petition or on its own initiative, the Commission may conduct a proceeding on the proposed discontinuance or change if it begins the proceeding between the date the carrier files the notice under subsection (a) of this section and the date on which the discontinuance or change is intended to be effective. After the proceeding begins, the Commission may order the carrier proposing the discontinuance or change to continue any part of the transportation pending completion of the proceeding and the decision of the Commission if the Commission serves a copy of its order on the carrier at least 10 days before the date on which the carrier intended the discontinuance or change to be effective. However, the Commission may not order the transportation continued for more than 4 months after the date on which the carrier intended the discontinuance or change to be effective.

[(c) If, after a proceeding completed either before or after the proposed discontinuance or change has become effective, the Commission finds that any part of the transportation is required or permitted by present or future public convenience and necessity and will not unreasonably burden interstate or foreign commerce, the Commission may order the carrier to continue or restore that transportation for not to exceed one year from the date of the Commission order. On expiration of the Commission order, the jurisdiction of each State involved in the discontinuance or change is no longer superseded except to the extent this section is again invoked.

[§ 10909. Discontinuing or changing train or ferry transportation in one State

[(a) When a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title has proposed a discontinuance or change of any part of the transportation of a train or ferry operated by it entirely in one State and—

[(1) the law of the State prohibits the discontinuance or change;

[(2) the carrier has requested the State authority having jurisdiction over the discontinuance or change for permission to discontinue or change the transportation and the request has been denied; or

[(3) the State authority has not acted finally by the 120th day after the carrier made the request;

the carrier may petition the Commission for permission to discontinue or change the transportation.

[(b) When a petition is filed under subsection (a) of this section, the Commission shall notify the chief executive officer of the State in which the train or ferry is operated concerning the petition. Before acting on the petition, the Commission shall give interested parties a full hearing. If such a hearing is requested, the Commission shall give all interested parties at least 30 days notice of the hearing and shall hold the hearing in the State in which the train or ferry is operated. The Commission may cooperate with, and use the services, records, and facilities of, the State in carrying out this section.

[(c) The Commission may grant permission to the carrier to discontinue or change any part of the transportation if the Commission finds that—

[(1) the present or future public convenience and necessity require or permit the discontinuance or change to be authorized by the Commission; and

[(2) continuing the transportation, without the proposed discontinuance or change, will constitute an unreasonable burden on the interstate operations of the carrier or on interstate commerce.

[§ 10910. Railroad development

[(a) In this section—

[(1) "financially responsible person" means a person who (A) is capable of paying the constitutional minimum value of the

railroad line proposed to be acquired, and (B) 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.

[(2) "railroad line" means (A) during the 3-year period beginning on the effective date of the Staggers Rail Act of 1980, a line of railroad which carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year, and (B) after the end of such 3-year period, any line of railroad.

[(b)(1) When the Interstate Commerce Commission 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 10904 of this title, but the rail carrier owning such line has not filed an application to abandon such line under sections 10903 and 10904 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, in accordance with regulations required under subsection (k) of this section, by a financially responsible person,

the Commission 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, but shall not include the cost of providing a protective arrangement under subsection (j) of this section.

[(c)(1) For purposes of this section, the Commission may determine that the public convenience and necessity require or permit the sale of a railroad line if the Commission 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 Commission finds under this subsection that the public convenience and necessity require or permit the sale of a particular railroad line, the Commission shall concur-

rently 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 Commission 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 Commission shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

[(e) The Commission 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 Commission for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Commission 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 subtitle, 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 the effective date of the Staggers Rail Act of 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.

[(j) In the case of any railroad line sold pursuant to this section, the Commission shall require the selling carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section 11347 of this title.

[(k) The Commission shall, within 60 days after the effective date of the Staggers Rail Act of 1980, prescribe such regulations

and procedures as may be necessary to carry out the provisons of this section.

[SUBCHAPTER II—OTHER CARRIERS AND MOTOR CARRIER BROKERS

[§ 10921. Requirement for certificate, permit, or license

[Except as provided in this subchapter or another law, a person may provide transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter III, of chapter 105 of this title or be a broker for transportation subject to the jurisdiction of the Commission under subchapter II of that chapter, only if the person holds the appropriate certificate, permit, or license issued under this subchapter authorizing the transportation or service.

[§ 10922. Certificates of motor and water common carriers

[(a) Except as provided in this section and section 10930(a) of this title, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title as a water common carrier, if the Commission finds that—

[(1) the person is fit, willing, and able—

[(A) to provide the transportation to be authorized by the certificate; and

[(B) to comply with this subtitle and regulations of the Commission; and

[(2) the transportation to be provided under the certificate is or will be required by the present or future public convenience and necessity.

[(b)(1) Except as provided in this section, the Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of property if the Commission finds that the person is able to comply with—

[(A) this subtitle, the regulations of the Commission, and any safety requirements imposed by the Commission,

[(B) the safety fitness requirements established by the Secretary of Transportation in consultation with the Commission under section 31144 of this title, and

[(C) the minimum financial responsibility requirements established by the Commission pursuant to section 10927 of this title.

[(2) In making a finding under paragraph (1), the Commission shall consider and, to the extent applicable, make findings on, any evidence demonstrating that the applicant is unable to comply with the requirements of subparagraph (A), (B), or (C) of that paragraph.

[(3) The Commission shall find any applicant for authority to operate as a motor carrier under this section to be unfit if the applicant does not meet the safety and safety fitness requirements

under paragraph (1)(A) or (1)(B) of this subsection and shall deny the application.

[(4) A person may protest an application under this subsection to provide transportation only on the ground that the applicant fails or will fail to comply with this subtitle, the regulations of the Commission, the safety requirements of the Commission, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of this subsection.

[(c)(1) except as provided in this section, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of household goods if the Commission finds—

[(A) that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission; and

[(B) on the basis of evidence presented by persons supporting the issuance of the certificate, that the service proposed will serve a useful public purpose, responsive to a public demand or need;

unless the Commission finds, on the basis of evidence presented by persons objecting to the issuance of a certificate, that the transportation to be authorized by the certificate is inconsistent with the public convenience and necessity.

[(2) In making a finding under paragraph (1) of this subsection, the Commission shall consider and, to the extent applicable, make findings on at least the following:

[(A) the transportation policy of section 10101(a) of this title; and

[(B) the effect of issuance of the certificate on existing carriers, except that the Commission shall not find diversion of revenue or traffic from an existing carrier to be in and of itself inconsistent with the public convenience and necessity.

[(3) The Commission may not make a finding relating to public convenience and necessity under paragraph (1) of this subsection which is based upon general findings developed in rulemaking proceedings.

[(4) Notwithstanding any other provision of law, any motor carrier providing transportation of shipments weighing 100 pounds or less transported in a motor vehicle in which no one package exceeds 100 pounds operating one or more commercial motor vehicles with a gross vehicle weight rating of 10,000 pounds or more shall be subject to commercial motor vehicle safety regulations promulgated by the Secretary of Transportation pursuant to this title with respect to its entire operations, including the operations of commercial motor vehicles with gross vehicle weight ratings less than 10,000 pounds.

[(5) No motor common carrier of household goods may protest an application to provide transportation filed under this subsection unless—

[(A)(i) it possesses authority to handle, in whole or in part, the traffic for which authority is applied;

[(ii) it is willing and able to provide service that meets the reasonable needs of the shippers involved; and

[(iii) it has performed service within the scope of the application during the previous 12-month period or has, actively in good faith, solicited service within the scope of the application during such period;

[(B) it has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

[(C) the Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 10101(a) of this title.

[(6) No motor contract carrier of household goods may protest an application to provide transportation filed under this subsection.

[(7) The provisions of paragraph (1) of this subsection (other than subparagraph (A)) shall not apply to applications under this subsection for authority to provide transportation for the United States Government of used household goods which transportation is incidental to a pack and crate service on behalf of the Department of Defense.

[(d) MOTOR COMMON CARRIERS OF PASSENGERS.—

[(1) INTERSTATE TRANSPORTATION.—

[(A) REGULAR-ROUTE TRANSPORTATION.—The Commission shall issue a certificate to a person (including any private recipient of governmental assistance) authorizing that person to provide regular-route transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers if the Commission finds that the person is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized by the certificate is not consistent with the public interest.

[(B) SPECIAL AND CHARTER TRANSPORTATION.—

[(i) PRIVATE RECIPIENTS OF ASSISTANCE.—The Commission shall issue a certificate to a private recipient of governmental assistance authorizing that recipient to provide special or charter transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers if the Commission finds that the recipient is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission funds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized by the certificate is not consistent with the public interest.

[(ii) OTHER PERSONS.—The Commission shall issue a certificate to a person (other than a private recipient

of governmental assistance) authorizing that person to provide special or charter transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers if the Commission finds that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission.

[(C) PUBLIC RECIPIENTS FOR CHARTER TRANSPORTATION.—The Commission shall issue a certificate to a public recipient of governmental assistance authorizing that recipient to provide special or charter transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers if the Commission finds that—

[(i) the recipient is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission; and

[(ii)(I) no motor common carrier of passengers (other than a motor common carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing and able to provide, the transportation to be authorized by the certificate; or

[(II) the transportation to be authorized by the certificate is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

[(D) PUBLIC RECIPIENTS FOR REGULAR-ROUTE TRANSPORTATION.—The Commission shall issue a certificate to a public recipient of governmental assistance authorizing that recipient to provide regular-route transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers if the Commission finds that the recipient is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized by the certificate is not consistent with the public interest.

[(E) TREATMENT OF CERTAIN PUBLIC RECIPIENTS.—Subject to section 10531 of this title, any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall, for purposes of this subtitle, be treated as a person which is providing or seeking to provide transportation of passengers subject to such jurisdiction.

[(F) DEFINITIONS.—In this subsection—

[(i) 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 subclause (I), (II), (III), or (IV), and

[(VI) any corporation, board, or other person owned by, controlled by, or under common control with, any entity described in subclause (I), (II), (III), (IV), or (V),

which before, on, or after the date of the enactment of this paragraph received governmental financial assistance for the purchase or operation of any bus.

[(ii) PRIVATE RECIPIENT OF GOVERNMENTAL ASSISTANCE.—The term "private recipient of governmental assistance" means any person (other than a person described in clause (i)) who before, on, or after the date of the enactment of this paragraph received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

[(2)(A) The Commission shall issue a certificate to a person authorizing that person to provide regular-route transportation entirely in one State as a motor common carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier has authority on the effective date of this subsection to provide interstate transportation of passengers if the Commission finds that the person is fit, willing, and able to provide the intrastate transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized would directly compete with a commuter bus operation and it would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

[(B) The Commission shall issue a certificate to a person authorizing that person to provide regular-route transportation entirely in one State as a motor common carrier of passengrs if such intrastate transportation is to be provided on a route over which the carrier has been granted authority, or will be granted authority, after the effective date of this section to provide interstate transportation of passengers if the Commission finds that the person is fit, willing, and able to provide the intrastate transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission finds, on the basis of evidence

presented by any person objecting to the issuance of the certificate, that the transportation to be authorized is not consistent with the public interest.

[(C) No State or political subdivision thereof and no interstate agency or other political agency of two 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, as defined in section 10526(b)(1) of this title, is served by a motor common carrier of passengers providing regular-route transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title.

[(D) Subject to subparagraph (F) of this paragraph, any intrastate transportation authorized by issuance of a certificate under this paragraph shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title. Upon issuance of such certificate, the carrier shall establish initial rates, rules, and practices applicable to such transportation to the same extent and in the same manner as a motor common carrier of passengers providing transportation subject to the jurisdiction of the Commission under such subchapter establishes rates, rules, and practices applicable to such interstate transportation. Any such rate, rule, or practice (including changes thereto) shall be subject to the provisions of chapter 107 of this title as if such rate, rule, or practice were related to interstate transportation.

[(E) Not later than 30 days after the date on which a motor common carrier of passengers first begins providing transportation entirely in one State pursuant to a certificate issued under this paragraph, the carrier shall take all action necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation.

[(F) Transportation entirely in one State authorized by issuance of a certificate under this paragraph shall remain subject to the jurisdiction of the Commission, and rates, rules, and practices applicable to such transportation established under subparagraph (D) of this paragraph shall remain in effect, until permanent rates, rules, and practices applicable to such transportation are established under the laws of such State.

[(G) The Commission shall take final action upon an application filed under subparagraph (A) of this paragraph for authority to provide transportation entirely in one State not later than 90 days after the date the application is filed with the Commission.

[(H) This paragraph shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

[(I) Notwithstanding subparagraph (F) of this paragraph, intrastate transportation authorized under this paragraph may be suspended or revoked by the Commission under section 10925 of this title.

[(J) LIMITATION ON INTRASTATE CERTIFICATES.—Each certificate issued under this paragraph to provide intrastate transportation of passengers on any route shall be subject to a condition which limits the authority of the carrier to provide intrastate transportation service under the certificate only if the carrier provides regularly scheduled interstate transportation service on the route.

[(3) In making any findings relating to public interest under paragraphs (1) and (2)(B) of this subsection, the Commission shall consider, to the extent applicable—

[(A) the transportation policy of section 10101(a) of this title;

[(B) the value of competition to the traveling and shipping public;

[(C) the effect of issuance of the certificate on motor carrier of passenger service to small communities;

[(D) whether issuance of the certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the regular-route passenger service which such carrier provides over its entire regular-route system; except that diversion of revenue or traffic from a motor common carrier of passengers in and of itself shall not be sufficient to support a finding that issuance of the certificate would impair the ability of the carrier to provide a substantial portion of the regular-route passenger service which the carrier provides over its entire regular-route system.

[(E) the amount and extent of governmental financial assistance which the applicant for the certificate received before, on, or after the date of the enactment of this subparagraph for the purchase or operation of buses.

In addition, in making any finding relating to public interest under paragraph (1)(D) of this subsection, the Commission shall consider whether or not the person objecting to issuance of the certificate is a motor common carrier of passengers which is providing, or is willing and able to provide, the transportation to be authorized by the certificate.

[(4) The provisions of paragraph (1) of this subsection relating to the Commission finding that transportation to be authorized by issuance of a certificate is not consistent with the public interest shall not apply to any application under this subsection for authority to provide—

[(A) interstate transportation service to any community not regularly served by a motor common carrier of passengers under this section;

[(B) interstate transportation service which will be a substitute for discontinued rail or commercial-air passenger service to a community if such discontinuance results in such community not having any rail and commercial-air passenger service and if such application is filed within 180 days after such discontinuance becomes effective; and

[(C) interstate transportation service to any community with respect to which the only motor common carrier of

passengers providing interstate transportation service to such community applies for authority to discontinue providing such interstate service under section 10925(b) of this title or applies for permission to discontinue or reduce its level of intrastate service to such community under section 10935 of this title.

[(5) The Commission may not make any finding under paragraphs (1) and (2) of this subsection which is based upon general findings developed in rulemaking proceedings.

[(6) The requirement that persons issued certificates under this subsection be fit, willing, and able means safety fitness and proof of minimum financial responsibility under section 18 of the Bus Regulatory Reform Act of 1982.

[(7) No motor common carrier of passengers may protest an application to provide transportation filed under this subsection or a request to remove an operating restriction under section 10922(i)(4) of this title unless—

[(A)(i) it posseses authority to handle, in whole or in part, the traffic for which authority is applied;

[(ii) it is willing and able to provide service that meets the reasonable needs of the traveling public; and

[(iii) it has performed service within the scope of the application during the previous 12-month period or has, actively in good faith, solicited service within the scope of the application during such period;

[(B) it has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

[(C) the Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 10101(a) of this title.

[(8) No motor contract carrier of passengers may protest an application to provide transportation filed under this subsection.

[(9) For purposes of this section, authority under this subsection to provide special or charter transportation of passengers by motor vehicle includes authority to provide such transportation as round-trip service and as one-way service if such one-way service may be provided as part of a round-trip movement involving the same passengers and air, rail, or water transportation or any combination of air, rail, or water transportation.

[(e) A person must file an application with the Commission for a certificate to provide transportation, as a motor common carrier or water common carrier. The Commission may approve any part of the application or deny the application. The application must—

[(1) be under oath;

[(2) contain information required by Commission regulations; and

[(3) be served on persons designated by the Commission.

[(f)(1) Subject to section 10927(a) of this title, each certificate issued to a person to provide transportation as a motor common carrier of household goods or passengers shall specify—

[(A) the transportation to be provided by the carrier;

[(B) any of the regular routes over which, any of the places between which, and off-route places at which, the carrier may provide transportation; and

[(C) if transportation is not over regular routes or between specified places, the area in which the carrier may provide transportation.

[(2) Under regulations of the Commission, a motor common carrier may occasionally deviate from the regular routes, or the places specified in the certificate, or both.

[(3) If a motor common carrier transports passengers, the Commission may authorize transportation of the passengers only over a regular route and between specified places, except to the extent the carrier is authorized to provide special or charter transportation.

[(4) A certificate of a motor common carrier to transport passengers shall be deemed to include permissive authority to transport newspapers, baggage of passengers, express packages, or mail in the same motor vehicle with the passengers, or baggage of passengers in a separate motor vehicle.

[(g) Each certificate issued to a person to provide transportation as a water common carrier shall specify each route over which, and each port between which, the carrier may provide transportation.

[(h)(1) A motor common carrier of household goods or passengers may provide transportation under a certificate only if the carrier complies with conditions the Commission finds are required by public convenience and necessity, including conditions—

[(A) on extending routes of the carrier; and

[(B) to carry out requirements established by the Commission under this subtitle.

[(2) The Commission may prescribe necessary conditions under which a water common carrier provides transportation, including conditions on extending routes of the carrier.

[(3) The Commission may prescribe conditions when the certificate is issued and at any time thereafter. The Commission may not prescribe a condition preventing—

[(A) a motor common carrier or water common carrier from adding to its equipment and facilities or its transportation within the scope of the certificate to satisfy business development and public demand; or

[(B) a water common carrier, if the carrier has authority to provide transportation over completed parts of a waterway project authorized under law, from extending its transportation over the uncompleted parts of the project when opened for navigation to satisfy business development and public demand.

[(i) A certificate issued under this section does not confer a proprietary or exclusive right to use the public highways or public waterways.

[(j)(1) Not later than 180 days after the date of enactment of this subsection, the Commission shall—

[(A) eliminate gateway restrictions and circuitous route limitations imposed upon motor common carriers of property; and

[(B) implement, by regulation, procedures to process expeditiously applications of individual motor carriers of property seeking removal of operating restrictions in order to—

[(i) reasonably broaden the categories of property authorized by the carrier's certificate or permit;

[(ii) authorize transportation or service to intermediate points on the carrier's routes;

[(iii) provide round-trip authority where only one-way authority exists;

[(iv) eliminate unreasonable or excessively narrow territorial limitations; or

[(v) eliminate any other unreasonable restriction that the Commission deems to be wasteful of fuel, inefficient, or contrary to the public interest.

[(2) The regulations promulgated by the Commission pursuant to paragraph (1)(B) of this subsection shall provide for final Commission action upon an application not later than 120 days after the date the application is filed with the Commission, except that in extraordinary circumstances, the Commission may extend such deadline for a period of not to exceed 90 additional days. Such regulations shall also provide for notice and the opportunity for interested parties to comment, but need not provide for oral evidentiary hearings. In granting or denying applications under paragraph (1)(B) of this subsection, the Commission shall (A) consider, among other things, the impact of the proposed restriction removal upon the consumption of energy resources, potential cost savings and improved efficiency, and the transportation policy set forth in section 10101(a) of this title, and (B) give special consideration to providing and maintaining service to small and rural communities and small shippers.

[(3) On the effective date of this paragraph, a certificate to provide interstate transportation of passengers issued under this section shall be deemed to authorize (but not require)—

[(A) round-trip operations where only one-way authority exists; and

[(B) special and charter transportation from all points in a political subdivision of a State in any case in which special and charter transportation authority is limited to one or more points of origin in such political subdivision.

[(4) Upon request of any person issued a certificate to provide interstate transportation of passengers under this section, the Commission shall within 90 days remove any operating restriction imposed on the certificate in order to authorize interstate transportation to intermediate points on any route covered by the certificate unless the Commission finds, on the basis of evidence presented by a person objecting to the removal of such an operating restriction, that the resulting interstate transportation directly competes with a commuter bus operation and will have a significant adverse effect on commuter bus service in the area in which the competing service will be provided.

[(k)(1) A person holding (A) a certificate issued under subsection (b) of this section to provide transportation as a motor common carrier of property, and (B) a permit issued under section 10923 of this title to provide transportation as a motor contract carrier of property, may transport property under the certificate in the same motor vehicle and at the same time as property under the permit.

[(2)(A) Subject to the provisions of this paragraph, a motor common carrier of passengers who has authority under this section to provide special or charter transportation of passengers and to provide regular-route transportation of passengers may transport the special or charter passengers in the same motor vehicle with regular-route passengers.

[(B) Subparagraph (A) of this paragraph shall only apply to transportation of passengers entirely in a State if the motor common carrier of passengers has authority under the laws of such State to provide within such State special or charter transportation of passengers and regular-route transportation of passengers and if the laws of such State and the certificate, permit, or other authority under which such carrier provides intrastate transportation in such State authorizes such carrier to transport special or charter passengers in the same motor vehicle with regular-route passengers.

[(C) Special or charter transportation of passengers may only be provided under subparagraph (A) of this paragraph in the same motor vehicle as regular-route transportation of passengers if the mixing of such passengers does not interfere with the obligation of the carrier to comply with section 11101 of this title.

[(3) Subject to such regulations as the Commission may issue, a person who has authority under this section to provide charter transportation of passengers may transport groups of charter passengers in the same motor vehicle at the same time.

[(l) A motor common carrier of property may deliver to or receive from a rail carrier a trailer moving in trailer-on-flat-car service at any point on the route of the rail carrier if the motor carrier is authorized to serve the origin and destination points of the traffic.

[(m)(1) Except as provided in paragraph (2) of this subsection, the Commission, notwithstanding any other provision of law (other than such paragraph (2)), shall not issue any certificate to any motor common carrier, any permit to any motor contract carrier, or any certificate of registration under section 10530 of this title to any foreign motor carrier or foreign motor private carrier, domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country in the four-year period beginning on the effective date of this subsection. The President of the United States may extend, beyond such four-year period, such moratorium or impose such a moratorium with respect to any contiguous foreign country or political subdivision thereof which substantially prohibits grants of authority to persons from the United States to provide transportation by motor vehicle for compensation in such foreign country or political subdivision.

[(2)(A) The President of the United States may remove or modify, in whole or in part, any moratorium imposed under paragraph (1) of this subsection on the issuance of certificates or permits if the President determines that such removal or modification is in the national interest and notifies, in writing, the Congress of such removal or modification before the date on which such removal or modification is to take effect. In any case in which such moratorium applies to a contiguous foreign country or political subdivision thereof which substantially prohibits grants of authority to persons from the United States to provide transportation by motor vehicle

for compensation in such foreign country or political subdivision, such removal or modification shall not take effect before the 60th day following the date on which the Congress is notified of such removal or modification.

[(B)(i) Subject to the provisions of this subparagraph, during a moratorium imposed under paragraph (1) of this subsection with respect to any contiguous foreign country or political subdivision thereof, the Commission may issue certificates of registration under section 10530 of this subtitle to foreign motor carriers and foreign motor private carriers domiciled in such country or political subdivision and to foreign motor carriers and foreign motor private carriers owned or controlled by persons of such country or political subdivision.

[(ii) Subject of clause (iv) of this subparagraph, if the person to be issued the certificate of registration during the moratorium is a foreign motor carrier domiciled in the foreign country or political subdivision or is a foreign motor carrier owned or controlled by persons of the foreign country or political subdivision, such certificate may only authorize such carrier to provide transportation of property (including exempt items) by motor vehicle in a municipality in the United States which is adjacent to the foreign country or political subdivision, in contiguous municipalities in the United States any one of which is adjacent to the foreign country or political subdivision, or in a zone in the United States that is adjacent to, and commercially a part of, the municipality or municipalities.

[(iii) Subject to clause (v) of this subsection, if the person to be issued the certificate of registration during the moratorium is a foreign motor private carrier domiciled in the foreign country or political subdivision or is a foreign motor private carrier owned or controlled by persons of the foreign country or political subdivision, such certificate may only authorize such carrier to provide transportation of property (including exempt items) by motor vehicle in a municipality in the United States which is adjacent to the foreign country or political subdivision, in contiguous municipalities in the United States any one of which is adjacent to the foreign country or political subdivision, or in a zone in the United States that is adjacent to, and commercially a part of, the municipality or municipalities.

[(iv) If the person to be issued the certificate of registration during the moratorium is a foreign motor carrier domiciled in the foreign country or political subdivision and owned or controlled by persons of the United States, such certificate may only authorize such carrier to provide interstate transportation of property (including exempt items) by motor vehicle.

[(v) If the person to be issued the certificate of registration during the moratorium is a foreign motor private carrier domiciled in the foreign country or political subdivision and owned or controlled by persons of the United States, such certificate may only authorize such carrier to provide interstate transportation of property (including exempt items) by motor vehicle.

[(vi) In this subparagraph, the terms "exempt items" "Foreign motor carrier", "Foreign motor private carrier", and "interstate transportation" have the meanings such terms have under section 10530(a) of this title.

[§ 10923. Permits of motor and water contract carriers and household goods freight forwarders

[(a) Except as provided in this section and section 10930 of this title, the Interstate Commerce Commission shall issue a permit to a person authorizing the person to provide transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title as a motor contract carrier of household goods or passengers or water contract carrier, respectively, or to provide service subject to that jurisdiction under subchapter IV of chapter 105 as a households goods freight forwarder, if the Commission finds that—

[(1) the person is fit, willing, and able—

[(A) to provide the transportation or service to be authorized by the permit; and

[(B) to comply with this subtitle and regulations of the Commission; and

[(2) the transportation or service to be provided under the permit is or will be consistent with the public interest and the transportation policy of section 10101 of this title.

[(b)(1) Except as provided in this section and section 10930 of this title, the Commission shall issue a permit to a person authorizing the person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor contract carrier of property other than household goods if the Commission finds that the person is able to comply with—

[(A) this subtitle, the regulations of the Commission, and any safety requirements imposed by the Commission,

[(B) the safety fitness requirements established by the Secretary of Transportation in consultation with the Commission pursuant to section 31144 of this title, and

[(C) the minimum financial responsibility requirements established by the Commission pursuant to section 10927 of this title.

[(2) In deciding whether to approve the application of a person for a permit as a motor contract carrier of property other than household goods the Commission shall consider any evidence demonstrating that the applicant is unable to comply with this subtitle, the regulations of the Commission, safety requirements of the Commission, or the safety fitness and minimum financial responsibility requirements of subsection (b)(1).

[(3) The Commission shall find any applicant for authority to operate as a motor carrier of property other than household goods under this subsection to be unfit if the applicant does not meet the safety and safety fitness requirements of paragraph (1)(A) or (1)(B) of this subsection and shall deny the application.

[(4) A person may protest an application under this subsection to provide transportation only on the ground that the applicant fails or will fail to comply with this subtitle, the regulations of the Commission, safety requirements of the Commission, or the safety fitness or minimum financial responsibility requirements of paragraph (1).

[(c)(1) A person must file an application with the Commission for a permit to provide transportation as a contract carrier or to pro-

vide service as a households[2] goods freight forwarder. The Commission may approve any part of the application or deny the application. The application must—

[(A) be under oath;

[(B) contain information required by Commission regulations; and

[(C) be served on persons designated by the Commission.

[(2) The provisions of paragraph (2) of subsection (a) of this section shall not apply to applications under this section for authority to provide transportation as a motor contract carrier of passengers. The requirement that persons issued permits under the section as motor contract carriers of passengers be fit, willing, and able means safety fitness and proof of minimum financial responsibility under section 18 of the Bus Regulatory Reform Act of 1982.

[(3) In deciding whether to approve the application of a person for a permit as a motor contract carrier of household goods, the Commission shall consider—

[(A) the nature of the transportation proposed to be provided;

[(B) the effect that granting the permit would have on the protesting carriers if such grant would endanger or impair their operations to an extent contrary to the public interest;

[(C) the effect that denying the permit would have on the person applying for the permit, its shippers, or both; and

[(D) the changing character of the requirements of those shippers.

[(4) No motor carrier of property may protest an application to provide transportation as a motor contract carrier of household goods filed under this section unless—

[(A)(i) it possesses authority to handle, in whole or in part, the traffic for which authority is applied;

[(ii) it is willing and able to provide service that meets the reasonable needs of the shippers involved; and

[(iii) it has performed service within the scope of the application during the previous 12-month period or has, actively in good faith, solicited service within the scope of the application during such period;

[(B) it has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

[(C) the Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 10101(a) of this title.

[(5) With respect to applications of persons for permits as motor contract carriers of household goods, the Commission may not make a finding relating to the public interest under subsection (a)(2) of this section which is based upon general findings developed in rulemaking proceedings.

[(6) The Commission may not deny any part of an application for a households goods freight forwarder permit filed by a corporation controlled by, or under common control with—

[(A) a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or

III of chapter 105 of this title, because of the relationship between the corporation and that carrier; and

[(B) a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 only because the service to be provided by the corporation will compete with service, provided by another households[1] goods freight forwarder subject to subchapter IV of that chapter.

[(d) Each permit issued to a person—

[(1) to provide transportation as a motor contract carrier is subject to section 10927(a) of this title and shall specify the transportation to be provided by the carrier;

[(2) to provide transportation as a water contract carrier shall specify the transportation to be provided by the carrier; and

[(3) to provide service as a households goods freight forwarder shall specify the nature or general description about which the service is to be provided, the area in which, and the areas between which, the service may be provided by the households goods freight forwarder.

[(e)(1) The Commission may prescribe necessary conditions under which a contract carrier of passengers or household goods or households goods freight forwarder provides transportation or service, except that in the case of a motor contract carrier of property, the Commission may not require such carrier to limit its operations to carriage for a particular industry or within a particular geographic area. The Commission may prescribe the conditions when the permit is issued and at any time thereafter.

[(2) The permit for a motor contract carrier shall specify necessary conditions, including in the case of a motor contract carrier of passengers, the number of persons, for which the carrier may provide transportation—

[(A) to ensure that the carrier provides transportation as a motor contract carrier and within the scope of the permit; and

[(B) to carry out requirements established by the Commission under this subtitle.

[(3) Subject to the permit and its conditions, a motor contract carrier may substitute or add to its equipment and facilities as requests for its transportation develop. The Commission may not prescribe a condition preventing—

[(A) a water contract carrier from substituting or adding contracts within the scope of the permit to satisfy the requirements of business development and public demand; and

[(B) a water contract carrier or household goods freight forwarder from adding to its equipment and facilities, and transportation or service, as the case may be, within the scope of the permit to satisfy the requirements of business development and public demand.

[(f) A motor contract carrier of property may deliver to or receive from a rail carrier a trailer moving in trailer-on-flat-car service at any point on the route of the rail carrier if the motor carrier is authorized to serve the origin and destination points of the traffic.

[§ 10924. Licenses of motor carrier brokers

[(a) The Interstate Commerce Commission shall issue, subject to section 10927(b) of this title, a license to a person authorizing the person to be a broker for transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, if the Commission finds that—

[(1) the person is fit, willing, and able—

[(A) to be a broker for transportation to be authorized by the license; and

[(B) to comply with this subtitle and regulations of the Commission; and

[(2) the transportation for which the person is to be a broker will be consistent with the public interest and the transportation policy of section 10101 of this title.

[(b) The Interstate Commerce Commission shall issue, subject to section 10927(b) of this title, a license to a person authorizing the person to be a broker for transportation of property (other than household goods) subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, if the Commission finds that the person is fit, willing, and able—

[(1) to be a broker for transportation to be authorized by the license; and

[(2) to comply with this subtitle and regulations of the Commission.

[(c)(1) The broker may provide the transportation itself only if the broker also has been issued a certificate or permit to provide the transportation under this subchapter. A broker may use only the transportation of a motor carrier holding a certificate or permit issued under this subchapter.

[(2) This subsection does not apply to a motor carrier having a certificate or permit issued under this subchapter 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 motor carriers holding certificates or permits, or with rail, express, or water common carriers.

[(d) A person must file an application with the Commission for a license to be a broker for motor carrier transportation. The Commission may approve the application or any part of it, or deny the application.

[(e) Commission regulations shall provide for the protection of shippers by motor vehicle, to be observed by brokers.

[(f) The Commission may impose on brokers for motor carriers of passengers such requirements for bonds or insurance or both as the Commission determines are needed to protect passengers and carriers dealing with such brokers.

[§ 10925. Effective periods of certificates, permits, and licenses

[(a) Each certificate, permit, and license issued under section 10922, 10923, or 10924 of this title is effective from the date specified in it and remains in effect except as otherwise provided in this section.

[(b) On application of the holder of a certificate, permit, or license, the Interstate Commerce Commission may amend or revoke

any part of the certificate, permit, or license. On complaint or on its own initiative and after notice and an opportunity for a proceeding, the Commission may suspend, amend, or revoke any part of a certificate, permit, or license—

[(1) if a motor carrier, broker, or household goods freight forwarder, for willful failure to comply with this subtitle, a regulation or order of the Commission, or a condition of its certificate, permit, or license; and

[(2) if a water carrier, for willful failure to comply with section 10701(a) or 11101(a) of this title, a regulation or order of the Commission, or a condition of its certificate or permit.

[(c)(1) Except on application of the holder, the Commission may revoke a certificate or permit of a motor carrier or household goods freight forwarder, or a license of a broker, only after the Commission has issued an order to the holder under section 11701 of this title requiring compliance with this subtitle, a regulation of the Commission, or a condition of the certificate, permit, or license of the holder, and the holder willfully does not comply with the order.

[(2) Except on application of the holder, the Commission may suspend, amend, or revoke a certificate or permit of a water carrier only after the Commission has issued an order to the holder under section 11701 of this title requiring compliance with section 10701(a) or 11101(a) of this title, and the holder willfully does not comply with the order.

[(3) The Commission may act under paragraph (1) or (2) of this subsection only after giving the holder of the certificate, permit, or license at least 30 days to comply with the order.

[(d)(1) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Commission may suspend a certificate or permit of a motor carrier, a permit of a household goods freight forwarder, or a license of a broker—

[(A) if a motor carrier of passengers, motor common carrier of household goods, or broker, for failure to comply with section 10701, 10702, 10761, 10762, 10924(e), or 10927 (b) or (d) of this title, or an order or regulation of the Commission prescribed under those sections;

[(B) if a motor contract carrier of property, for failure to comply with safety requirements of the Commission or the safety fitness requirements pursuant to section 10701, 10924(e), 10927 (b) or (d), or 31144, of this title;

[(C) if a motor common carrier of property other than household goods, for failure to comply with safety requirements of the Commission or the safety fitness requirements pursuant to section 10701, 10702, 10924(e), 10927 (b) or (d), or 31144 of this title; and

[(D) if a household goods freight forwarder, for failure to comply with section 10762 or 10927 (c) or (d) of this title, or an order or regulation of the Commission prescribed under those sections.

[(2) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, upon petition by the Secretary of Transportation, the Commission may suspend a certificate or permit of a motor carrier of passengers if the Commission finds

that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.

[(3) The Commission may suspend the certificate, permit, or license only after it gives notice of the suspension to the holder at least 15 days before the date the suspension is to begin. The suspension remains in effect until the holder complies with those applicable sections or, in the case of a suspension under paragraph (2) of this subsection, until the Commission revokes such suspension.

[(e)(1) On application of a motor contract carrier who holds a permit issued under section 10923 of this title, or on complaint of a competing motor common carrier who holds a certificate under section 10922 of this title, or on its own initiative, if the Commission, after notice and an opportunity for a proceeding, determines that the operations under the permit or any part thereof—

[(A) do not conform with the operations of a motor contract carrier; and

[(B) are those of a motor common carrier;

the Commission may amend or revoke such permit or part thereof to conform the operations under such permit or part thereof to the operations of a motor contract carrier.

[(2) The Commission may issue in place of any permit or part thereof revoked under this subsection a certificate under section 10922 of this title which authorizes the holder of such certificate to provide as a motor common carrier the same type of transportation between the same points or within the same territory as authorized in the permit or part thereof.

[§ 10926. Transfers of certificates and permits

[Except as provided in this subtitle, a certificate or permit issued under section 10922 or 10923 of this title—

[(1) if a certificate or permit of a motor carrier, may be transferred under regulations of the Interstate Commerce Commission;

[(2) if a certificate or permit of a water carrier, may be transferred under regulations prescribed by the Commission to protect the public interest and to ensure compliance with this subtitle; and

[(3) if a permit of a household goods freight forwarder, may be transferred under regulations prescribed by the Commission to ensure compliance with this subtitle, if the Commission finds that the person to whom the permit is to be transferred satisfies section 10923 (a) and (b) of this title. However, if the proposed transfer would affect the interests of employees of a household goods freight forwarder, the Commission shall require a fair and equitable arrangement to protect the interests of those employees before the transfer is effective.

[§ 10927. Security of motor carriers, brokers, and freight forwarders

[(a)(1) The Commission may issue a certificate under section 10922 or 10530 or a permit under section 10923 only if the carrier (including a motor private carrier and a foreign motor private carrier) applying for such certificate files with the Commission a bond,

insurance policy, or other type of security approved by the Commission, in an amount not less than such amount as the Secretary of Transportation prescribes pursuant to, or as is required by, section 30 of the Motor Carrier Act of 1980, section 18 of the Bus Regulatory Reform Act of 1982, and the laws of the State or States in which the carrier 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 carrier for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles under the certificate or permit, or for loss or damage to property (except property referred to in paragraph (3) of this subsection), or both. A certificate or permit remains in effect only as long as the carrier satisfies the requirements of this paragraph.

[(2) A motor carrier and a foreign motor private carrier and foreign motor carrier (as defined under section 10530(a)) operating in the United States when providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country shall comply with the requirements of sections 10329 and 10330 that apply to a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title. To protect the public, the Commission 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.

[(3) The Commission may require a motor common carrier providing transportation under a certificate to file with the Commission 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 common carrier as the result of transportation provided under this subtitle. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor common 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) The Commission may issue a broker's license to a person under section 10924 of this title only if the person files with the Commission a bond insurance policy, or other type of security approved by the Commission to ensure that the transportation for which a broker arranges is provided. The license remains in effect only as long as the broker complies with this subsection.

[(c)(1) The Commission may require a household goods freight forwarder providing service under a permit issued under section 10923 of this title to file with the Commission a bond, insurance policy, or other type of security approved by the Commission. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the household goods 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 subtitle.

[(2) The Commission may require a household goods freight forwarder providing service under a permit or a freight forwarder to file with the Commission a bond, insurance policy, or other type of security approved by the Commission 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.

[(d) The Commission may determine the type and amount of security filed with it under this section.

[§ 10928. Temporary authority for motor and water carriers

[(a) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Interstate Commerce Commission may grant a water carrier temporary authority to provide transportation to a place or in an area having, respectively, no water carrier capable of meeting the immediate needs of the place or area. Unless suspended or revoked, the Commission may grant the temporary authority for not more than 180 days. A grant of temporary authority does not establish a presumption that permanent authority to provide transportation will be granted under this subchapter.

[(b)(1) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Commission, pursuant to such regulations as the Commission may issue, may grant a motor carrier temporary authority to provide transportation to a place or in an area having no motor carrier capable of meeting the immediate needs of the place or area. Unless suspended or revoked, the Commission may grant the temporary authority for not more than 270 days. A grant of temporary authority does not establish a presumption that permanent authority to provide transportation will be granted under this subchapter.

[(2) The Commission shall take final action upon an application filed under this subsection no later than 90 days after the date the application is filed with the Commission.

[(c)(1) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Commission, pursuant to such regulations as the Commission may issue, may grant a motor carrier emergency temporary authority to provide transportation to a place or in an area having no motor carrier capable of meeting the immediate needs of the place or area if the Commission determines that, due to emergency conditions, there is not sufficient time to process an application for temporary authority under subsection (b) of this section. Unless suspended or revoked, the Commission may grant the emergency temporary authority for not more than 30 days, and the Commission may extend such authority for a period of not more than 90 days and, in addition, in the case of a motor carrier of passengers, the Commission may extend such authority for a period of more than 90 days but not more than 180 days if no other motor carrier of passengers is providing transportation to the place or in the area. A grant of emergency temporary authority does not establish a presumption that permanent authority to provide transportation will be granted under this subchapter.

[(2) The Commission shall take final action upon an application filed under this subsection not later than 15 days after the date the application is filed with the Commission.

[§ 10929. Temporary authority for previously exempt water transportation

[When transportation exempt from the jurisdiction of the Interstate Commerce Commission under section 10544(a)–(c) of this title becomes subject to the jurisdiction of the Commission, the water carrier may continue to provide the transportation without a certificate or permit issued under this subchapter for a period of 120 days beginning on the day the transportation becomes subject to the jurisdiction of the Commission. If the carrier applies to the Commission within that period for a certificate or permit to provide the transportation previously exempt, the Commission shall issue to the carrier the appropriate certificate or permit authorizing the transportation. The Commission shall issue each such certificate and permit without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

[§ 10930. Limitations on certificates and permits

[(a) Except when the Interstate Commerce Commission finds good cause consistent with the public interest and the transportation policy of section 10101 of this title—

[(1) a person may not hold both a certificate of a water common carrier and a permit of a water contract carrier issued under this subchapter, to transport property over the same route or in the same area; and

[(2) if a person controls, is controlled by, or is under common control with, another person, one of them may not hold a certificate of a water common carrier, while the other holds a permit of a water contract carrier, to transport property over the same route or in the same area.

[(b)(1) A person may not hold a permit of a household goods freight forwarder issued under this subchapter if the person is a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title.

[(2) Except for motor vehicle transportation subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title by section 10523(a)(2) of this title, a permit may not authorize a household goods freight forwarder to conduct direct rail, water, or motor carrier transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter.

[(3) Except when the Commission finds that service to be provided as a household goods freight forwarder is consistent with the public interest and the transportation policy of section 10101 of this title, a person may not hold a permit of a household goods freight forwarder when—

[(A) the principal business of the person is manufacturing and selling, or buying and selling, or both manufacturing and selling and buying and selling articles or commodities, and the service of a household goods freight forwarder (or similar assembling, consolidating, and shipping service is provided by the person for its own business) is commonly used to transport the articles or commodities; or

[(B) the person controls, is controlled by, or is under common control with, a person referred to in clause (A) of this paragraph.

[§ 10931. Motor common carriers providing transportation entirely in one State

[(a) A motor common carrier may provide transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title without a certificate issued by the Commission under section 10922 of this title, when—

[(1) the carrier provides transportation entirely in one State;

[(2) the carrier is not controlled by, controlling, or under common control with a carrier providing transportation outside the State;

[(3) the carrier has applied for, and has been issued, a certificate of public convenience and necessity by the State authority having jurisdiction to issue such a certificate, permitting the carrier to provide intrastate transportation by motor vehicle; and

[(4) the intrastate certificate was issued after, and the certificate states that—

[(A) notice was given to interested parties through publication in the Federal Register of the filing of the application by the carrier and the desire of the carrier to provide transportation otherwise under the jurisdiction of the Commission within the limits of the certificate issued by the State authority;

[(B) reasonable opportunity to be heard was given; and

[(C) the State authority considered and found that the public convenience and necessity require that the carrier be permitted to provide transportation under the jurisdiction of the Commission within limits that do not exceed the scope of the certificate issued by the State authority.

[(b) An interested party that opposed issuing the certificate to a motor common carrier in a proceeding before a State authority may petition the Commission for reconsideration of a decision of the State authority. On reconsideration, the Commission, based on the record before the State authority, may affirm, reverse, or change that decision, but only with respect to the transportation subject to Commission jurisdiction.

[(c) The Commission may require, before a motor common carrier provides transportation authorized under this section, that—

[(1) a certified copy of the carrier's intrastate certificate and other appropriate information be filed with the Commission; and

[(2) the carrier comply with applicable requirements established by the Commission.

[(d)(1) The Commission shall issue a certificate of registration to a motor common carrier authorizing the carrier to provide transportation under this section. The authority granted under the certificate is subject to all other applicable provisions of this subtitle. Except as otherwise provided in this subsection and subchapter III of chapter 113 of this title, the certificate of registration may be transferred if it is transferred with the intrastate certificate. Trans-

fer of the intrastate certificate without the certificate of registration revokes the certificate of registration.

[(2) The certificate of registration issued by the Commission is valid as long as the motor common carrier provides transportation entirely in the State from which it received its intrastate certificate and is not controlled by, controlling, or under common control with, a carrier providing transportation outside the State.

[(e)(1) On the 180th day after the termination, restriction in scope, or suspension of the intrastate certificate, the authority granted under this section to provide transportation is revoked or likewise restricted unless the intrastate certificate is renewed or reissued or the restriction is removed by that 180th day.

[(2) Transportation authorized under this section may be suspended or revoked by the Commission under section 10925 of this title.

[§ 10932. Motor carrier savings provisions

[(a) Except as specifically provided in a certificate or permit, the holder of a motor carrier certificate or permit issued as the result of an application filed before September 2, 1950, authorizing the carrier to provide transportation in the United States or between the United States and a foreign country (to the extent the transportation is in the United States), may provide the transportation between a place in the United States and a place in a territory or possession of the United States—

[(1) without being authorized to do so by the Interstate Commerce Commission; and

[(2) to the same extent and subject to the same conditions of the certificate or permit of the carrier.

[(b)(1) A motor common carrier providing transportation under an intrastate certificate issued by a State and under a certificate of registration issued by the Commission under section 206(a)(7) of the Interstate Commerce Act (76 Stat. 912) that has been in effect since October 15, 1962, may continue to provide transportation otherwise subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title—

[(A) if the certificate of the State authorizing intrastate transportation is limited to a specified period of time, only for that period;

[(B) subject to all other applicable provisions of this subtitle;

[(C) as long as the carrier provides transportation only in the State issuing the intrastate certificate; and

[(D) as long as the carrier is not controlled by, controlling, or under common control with, a carrier providing transportation outside the State.

[(2) Except as provided in subchapter III of chapter 113 of this title, the certificate of registration issued by the Commission may be transferred if it is transferred with the intrastate certificate. Transfer of the intrastate certificate without the certificate of registration revokes the certificate of registration.

[(3) On the 180th day after the termination, restriction in scope, or suspension of the intrastate certificate, the authority granted under the certificate of registration is revoked or likewise restricted unless the intrastate certificate is renewed or reissued or the re-

striction is removed by that 180th day. The certificate of registration may be suspended or revoked by the Commission under section 10925 of this title.

[(c) Under regulations of the Commission, a motor common carrier transporting passengers under a certificate issued by the Commission as the result of an application filed before January 2, 1967, or under a reissuance of the operating authority provided in the certificate, may provide transportation to any place subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title for special and chartered parties.

[(d) The Commission may not prescribe a condition for a motor contract carrier permit issued before August 23, 1957, that restricts the authority of the carrier—

[(1) to substitute similar contracts within the scope of the permit; or

[(2) to add contracts within the scope of the permit, unless the Commission, on its own initiative or on petition of an interested carrier, finds that the scope of the transportation to be provided by the motor contract carrier under any such additional contract is not confined to transportation provided by a motor contract carrier as defined after August 21, 1957.

[§ 10933. Authorizing abandonment of household goods freight forwarder service

[When a household goods freight forwarder is controlled by, or under common control with, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title, the household goods freight forwarder may abandon any part of the service it provides subject to the jurisdiction of the Commission under subchapter IV of chapter 105, only if the Commission finds the abandonment is consistent with the public interest and the transportation policy of section 10101 of this title. On making the finding, the Commission shall issue to the household goods freight forwarder a certificate describing the abandonment authorized by the Commission.

[§ 10934. Household goods agents

[(a) Each motor common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title 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) subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and which are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier.

[(b) Each motor common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title 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 accesso-

rial and terminal services) and to fulfill the obligations imposed upon them by this subtitle and by such carrier.

[(c)(1) Whenever the Commission 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 common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title has violated section 11901(k) or 11917 of this title or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), it 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) Such agent shall have the right to appear at such hearing and rebut the charges contained in the complaint.

[(3) If such person does not appear at the hearing or if the Commission finds that the agent has violated section 11901(k) or 11917 of this title or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), it may issue an order to compel compliance with the requirement that the agent be fit, willing, and able. Thereafter, the Commission 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 subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title if, after notice and an opportunity for a hearing, it 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) Upon filing of a petition with the Commission 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) Any agent adversely affected or aggrieved by an order of the Commission issued under this subsection may seek relief in the appropriate United States court of appeals as provided by an in the manner prescribed in chapter 158 of title 28, United States Code.

[(d) 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 common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and its agents (whether or not an agent is also a carrier) related solely to (1) rates for the transportation of household goods under the authority of the principal carrier, (2) accessorial, terminal, storage, or other charges for services incidental to the transportation of household goods transported under the authority of the principal carrier, (3) allowances relating to transportation of household goods under the authority of the principal carrier, and (4) ownership of a motor common carrier providing transportation of household goods subject

to the jurisdiction of the Commission under subchapter II of chapter 105 of this title by an agent or membership on the board of directors of any such motor common carrier by an agent.

[§ 10935. Discontinuing bus transportation in one State

[(a) When a motor common carrier of passengers having intrastate authority under the laws of a State, and interstate authority under a certificate issued under section 10922 of this title, to provide transportation over any route to any point in such State has proposed to discontinue providing transportation over such route to such point or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays) and the carrier has requested the department, agency, or instrumentality of such State having jurisdiction over granting such discontinuance or reduction for permission to discontinue such intrastate transportation or to reduce its level of service to a level which is less than one trip per day (excluding Saturdays and Sundays) and the request has been denied (in whole or in part) or such department, agency, or instrumentality has not acted finally (in whole or in part) on the request by the 120th day after the carrier made the request, the carrier may petition the Commission for such permission.

[(b) When a petition is filed under subsection (a) of this section, the carrier shall certify that he has notified (1) the Governor of the State in which such transportation is provided, (2) the State authority having jurisdiction over granting discontinuances of transportation by motor common carriers of passengers and reductions in levels of service by such carriers, (3) local governments having jurisdiction over areas which would be affected if such petition is granted, and (4) such other interested persons as the Commission may specify by regulation.

[(c) Any person (including a department, agency, or instrumentality of a State or local government) may object to the Commission to the granting of permission to any motor common carrier of passengers to discontinue or reduce transportation under this section.

[(d) If no person objects under subsection (c) of this section to the granting of permission to discontinue or reduce transportation under this section within 20 days after the carrier files with the Commission the petition for such discontinuance or reduction, the Commission shall grant such permission at the end of such 20-day period.

[(e)(1)(A) Subject to paragraph (3) of this subsection, if, within 20 days after a carrier files a petition for permission to discontinue providing intrastate transportation over any route to any point or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays), any person objects under subsection (c) of this section to the Commission to the granting of such permission, the Commission shall grant such permission unless the Commission finds, on the basis of evidence presented by the person objecting to the granting of such permission, that such discontinuance or reduction is not consistent with the public interest or that continuing the transportation, without the proposed discontinuance or reduction, will not constitute an unreasonable burden on interstate commerce.

[(B) This paragraph shall apply to intrastate transportation of passengers which is being provided by a motor common carrier of passengers on a route over which such carrier was granted, on or before August 1, 1982, authority to provide interstate transportation of passengers.

[(2)(A) Subject to paragraph (3) of this subsection, if, within 20 days after a carrier files a petition for permission to discontinue providing intrastate transportation over any route to any point or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays), any person objects under subsection (c) of this section to the Commission to the granting of such permission, the Commission shall grant such permission unless the Commission finds, on the basis of evidence presented by the person objecting to the granting of such permission, that continuing the transportation, without the proposed discontinuance or reduction, will not constitute an unreasonable burden on interstate commerce. For the purposes of this paragraph, continuance of the transportation would not constitute an unreasonable burden on interstate commerce only if discontinuance or reduction of such transportation is not consistent with the public interest and the interstate and intrastate revenues from such service under reasonable pricing practices are not less than the variable costs of providing the transportation proposed to be discontinued or reduced.

[(B) This paragraph shall apply to intrastate transportation of passengers which is being provided by a motor common carrier of passengers on a route over which such carrier was granted after August 1, 1982, and before the effective date of this section, or is granted on or after such effective date, authority to provide interstate transportation of passengers.

[(3) The Commission shall only grant permission to a carrier to discontinue intrastate transportation over any route to any point under this subsection if such carrier has applied for authority to discontinue its interstate transportation over such route to such point under section 10925(b) of this title and the Commission has granted or will grant such authority.

[(4) If any person objects under subsection (c) of this section to the granting of permission to discontinue or reduce transportation under this section within 20 days after the carrier files with the Commission the petition for such discontinuance or reduction, the carrier, within 15 days after the filing of such objection with the Commission, shall furnish to the Commission and to objecting persons—

[(A) an estimate of the annual subsidy required, if any, to continue the service;

[(B) traffic, revenue, and other data necessary to determine the amount of annual financial assistance, if any, which would be required to continue the service; and

[(C) such other information as the Commission may require by regulation.

The Commission shall take final action upon such petition not later than 90 days after the date the carrier files such petition.

[(f) Before a discontinuance or reduction in level of service proposed in a petition filed by a carrier under subsection (a) of this

section has become effective, the Commission may order the carrier to continue any part of the intrastate transportation in not to exceed the 165-day period beginning on the date the carrier files such petition with the Commission.

[(g)(1) In making a finding under subsection (e)(1) of this section the Commission shall accord great weight to the extent to which interstate and intrastate revenues received for providing the transportation proposed to be discontinued or reduced are less than the variable costs of providing such transportation, including depreciation for revenue equipment. For purposes of the preceding sentence, the carrier filing a petition for permission to discontinue or reduce service shall have the burden of proving the amount of the interstate and intrastate revenues received for providing the transportation and the variable costs of providing the transportation.

[(2) In making a finding under subsection (e)(1) or (e)(2) of this section, the Commission shall consider, to the extent applicable, at least—

[(A) the national transportation policy of section 10101 of this title;

[(B) whether the motor common carrier of passengers has received an offer of, or is receiving, financial assistance to provide the transportation to be discontinued or reduced from a financially responsible person (including a governmental authority); and

[(C) in the case of a petition to discontinue transportation to any point, whether the transportation is the last motor carrier of passenger service to such point and whether a reasonable alternative to such service is available.

[(h) No State or political subdivision thereof and no interstate agency or other agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to discontinuance or reduction in the level of intrastate service by a motor common carrier of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title corresponding to an interstate service initiated pursuant to the provisions of section 10922(c)(4) of this title, except to the extent that notice of discontinuance or reduction in service, not in excess of 30 days, may be required.

[(i) This section shall not apply to any carrier owned or controlled by a State or local government.

[§ 10936. Limitation on State regulation of intrastate passengers by bus

[A State or political subdivision of a State may not enforce any law or regulation relating to intrastate fares for the transportation of passengers by bus by an interstate motor carrier of passengers over a route authorized by the Commission.

[CHAPTER 111—OPERATIONS OF CARRIERS

[SUBCHAPTER I—GENERAL REQUIREMENTS

[Sec.

[11101. Providing transportation and service.
[11102. Classification of carriers.
[11103. Use of terminal facilities.

[11104. Switch connections and tracks.
[11105. Protective services.
[11106. Identification of motor vehicles.
[11107. Leased motor vehicles.
[11108. Water carriers subject to unreasonable discrimination in foreign transportation.
[11109. Loading and unloading motor vehicles.
[11110. Household goods carrier operations.
[11111. Use of citizen band radios on buses.

[SUBCHAPTER II—CAR SERVICE

[11121. Criteria.
[11122. Compensation and practice.
[11123. Situations requiring immediate action.
[11124. Rerouting traffic on failure of rail carrier to serve the public.
[11125. Directed rail transportation.
[11126. Distribution of coal cars.
[11127. Service of household goods freight forwarders.
[11128. War emergencies; embargoes imposed by carriers.

[SUBCHAPTER III—REPORTS AND RECORDS

[11141. Definitions.
[11142. Uniform accounting system.
[11143. Depreciation charges.
[11144. Records: form; inspection; preservation.
[11145. Reports by carriers, lessors, and associations.

[SUBCHAPTER IV—RAILROAD COST ACCOUNTING

[11161. Railroad Accounting Principles Board.
[11162. Cost accounting principles.
[11163. Implementation of cost accounting principles.
[11164. Certification of rail carrier cost accounting systems.
[11165. Cost availability.
[11166. Accounting and cost reporting.
[11167. Report.
[11168. Authorization of appropriations.

[SUBCHAPTER I—GENERAL REQUIREMENTS

[§ 11101. Providing transportation and service

[(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide the transportation or service on reasonable request. In addition, a motor common carrier shall provide safe and adequate service, equipment, and facilities. A rail carrier shall not be found to have violated this section because it fulfills its commitments under contracts approved under section 10713 of this title before responding to reasonable requests for service.

[(b) The Commission may prescribe requirements for continuous and adequate transportation and service provided by motor common carriers and household goods freight forwarders subject to the jurisdiction of the Commission under subchapters II and IV of chapter 105 of this title and for transportation of baggage and express by such motor common carriers of passengers.

[(c) The Commission may not regulate the duration of, or the amount of compensation payable under, an arrangement between a motor carrier and another party to use, with a driver, a motor vehicle not owned by that carrier to transport property when—

[(1) the motor vehicle—

[(A) to be used is that of (i) a farmer or a cooperative association or a federation of cooperative associations under section 10526(a) (4) or (5) of this title, or (ii) a motor private carrier and it is used regularly in the transportation of property referred to in section 10526(a)(6) of this title, or perishable products manufactured from perishable property referred to in that section; and

[(B) is to be used by the carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area where the motor vehicle is based; or

[(2) the motor vehicle to be used has completed a movement exempt under section 10526(a)(6) of this title and is next to be used by that carrier in a loaded movement in any direction or in a movement referred to in clause (1)(B) of this subsection, or both.

[(d) RESOLUTION OF DISPUTES RELATING TO CONTRACT OR COMMON CARRIER CAPACITIES.—If a motor carrier (other than a motor carrier providing transportation of household goods) subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title has authority to provide transportation as both a motor common carrier and a motor contract carrier and a dispute arises as to whether certain transportation is provided in its common carrier or contract carrier capacity and the parties are not able to resolve the dispute consensually, the Commission shall have jurisdiction to, and shall, resolve the dispute.

[§ 11102. Classification of carriers

[The Interstate Commerce Commission may classify and maintain requirements for groups of carriers included in the terms "motor common carrier", "water common carrier", "motor contract carrier", or "water contract carrier" and for brokers, when required because of the special nature of the transportation provided by them.

[§ 11103. Use of terminal facilities

[(a) The Interstate Commerce Commission 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 Commission under subchapter I of chapter 105 of this title, to be used by another rail carrier if the Commission 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 carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the carriers cannot agree, the Commission 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 carrier may begin to use the facilities of another carrier under this section.

[(b) A rail carrier whose terminal facilities are required to be used by another carrier under this section is entitled to recover damages from the other 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 Commission 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 carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Commission may establish such conditions and compensation.

[(2) The Commission 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.

[§ 11104. 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 common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title 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 common 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 Commission under section 11701 of this title. The Commission shall investigate the complaint and decide the safety, practicability, justification, and compensation to be paid for the connection. The Commission may direct the common carrier to comply with subsection (a) of this section only after a full hearing.

[§ 11105. Protective services

[A rail or express carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may arrange for a person to furnish to or for the carrier a protective service against heat or cold for property transported by it subject to that jurisdiction only when the Commission finds the arrangement to be reasonable and in the public interest.

[§ 11106. Identification of motor vehicles

[(a) The Interstate Commerce Commission may—

[(1) issue and require the display of an identification plate on a motor vehicle used in transportation subject to its jurisdiction under subchapter II of chapter 105 of this title; and

[(2) require the carrier to pay the reasonable cost of the plate.

[(b) A carrier may use an identification plate only as authorized by the Commission.

[§ 11107. Leased motor vehicles

[(a) Except as provided in section 11101(c) of this title, the Interstate Commerce Commission may require a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title 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 of Transportation on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

[(b) The Commission shall require, by regulation, that any arrangement, between a motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title 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.

[§ 11108. Water carriers subject to unreasonable discrimination in foreign transportation

[(a) The Interstate Commerce Commission may relieve a water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, from the requirements of this subtitle when a rate, rule, or practice established by a person providing water transportation to or from a port in a foreign country in competition with that carrier unreasonably discriminates against that carrier. The Commission may relieve that carrier to the extent and for the period of time necessary to end or ease the discrimination if the relief is in the public interest and consistent with the transportation policy of section 10101 of this title.

[(b) The Commission may begin a proceeding under this section on its own initiative or on application.

[§ 11109. Loading and unloading motor vehicles

[(a) 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 the jurisdiction of the Commission under subchapter II of chapter 105 of this title) 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) 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 the jurisdiction of the Commission under subchapter II of chapter 105 of this title) 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.

[§ 11110. Household goods carrier operations

[(a)(1) The regulations and paperwork required of motor common carriers providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall be minimized to the maximum extent feasible consistent with the protection of individual shippers.

[(2) The Interstate Commerce Commission may issue regulations, including regulations protecting individual shippers, in order to carry out this subtitle with respect to the transportation of household goods by motor common carrier.

[(3) Regulations of the Commission protecting individual shippers shall include, where appropriate, reasonable performance standards for the transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title. In establishing performance standards under this paragraph, the Commission shall take into account at least the following:

[(A) the level of performance that can be achieved by a well-managed motor common carrier transporting household goods;

[(B) the degree of harm to individual shippers which could result from a violation of the regulation;

[(C) 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;

[(D) service requirements of the carriers;

[(E) the cost of compliance in relation to the consumer benefits to be achieved from such compliance; and

[(F) the need to set the level of performance at a level designed to encourage carriers to offer service responsive to shipper needs.

[(4) Nothing in this section shall be construed to limit the Commission's authority to require reports from motor common carriers providing transportation of household goods or to require such carriers to provide specified information to consumers concerning their past performance.

[(b)(1) Every motor common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may, upon request of a prospective shipper, provide the shipper with an estimate of charges for transportation of household goods and for the proposed services. The Commission shall not prescribe specific formulas, forms, methods, or techniques for providing a prospective shipper with such an estimate. The Commission shall not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and proposed services nor shall the Commission require the final charges to a shipper to be based on an estimate.

[(2) Any charge for an estimate of charges provided by a motor common carrier to a shipper for transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall be subject to the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12).

[(c) The Commission shall issue regulations that provide motor carriers providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title with the maximum possible flexibility in weighing shipments, consistent with assurance to the shipper of accurate weighing practices. The Commission 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.

[§ 11111. Use of citizen band radios on buses

[(a)(1) A motor carrier of passengers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall allow the operator of any motor vehicle providing such transportation to temporarily install and operate a citizen band radio in such vehicle if the Secretary of Transportation issues a rule or regulation which recommends that operators of such vehicles be allowed to temporarily install and operate such radios in such vehicles.

[(2) Citizen band radios installed and operated in motor vehicles providing transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall be installed and operated in accordance with the guidelines established by the Secretary of Transportation under section 25(c) of the Bus Regulatory Reform Act of 1982.

[(b) The Commission shall issue such regulations as it considers necessary to carry out this section.

[SUBCHAPTER II—CAR SERVICE

[§ 11121. Criteria

[(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Commission may require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate car service if the Commission decides that the rail carrier has materially failed to furnish that service. The Commission may begin a proceeding under this paragraph when an interested person files an application with it. The Commission 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 carrier to provide safe and adequate transportation;

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

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

[(2) The Commission may require a rail carrier to—

[(A) file its car service rules with the Commission; and

[(B) incorporate those rules in its tariffs.

[(b) The Commission may designate and appoint agents and agencies to make and carry out its directions related to car service and matters under sections 11123–11125, 11127, and 11128(a)(1) of this title.

[§ 11122. Compensation and practice

[(a) The regulations of the Interstate Commerce Commission 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 Commission 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

[(a)(1) When the Interstate Commerce Commission finds that a shortage of equipment, congestion of traffic, or other failure in traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States, the Commission may, for a period not to exceed thirty days—

[(A) suspend any car service rule or practice;

[(B) take action during the emergency to promote service in the interest of the public and of commerce regardless of the ownership (as between carriers) of a locomotive, car, or other vehicle on terms of compensation the carriers establish between themselves, subject to subsection (b)(2) of this section;

[(C) require joint or common use of facilities, on terms of compensation the carriers establish between themselves, subject to subsection (b)(2) of this section, when that action will best meet the emergency and serve the public interest; and

[(D) give directions for preference or priority in transportation, embargoes, or movement of traffic under permits.

[(2) The Commission may extend any action taken under paragraph (1) of this subsection beyond the thirty-day period provided in such paragraph only if the full Commission, after a hearing, certifies that a transportation emergency exists.

[(3) In carrying out the provisions of this subsection, the Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with the traffic subject to the action of the Commission.

[(b)(1) Except as provided in paragraph (2) of this subsection, the Commission may act under this section on its own initiative or on application without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

[(2) When the carriers do not agree on terms of compensation under subsection (a)(2) of this section or on terms for joint or common use of terminals under subsection (a)(3) of this section, the Commission may establish for them in a later proceeding terms of compensation the Commission finds to be reasonable.

[§ 11124. Rerouting traffic on failure of rail carrier to serve the public

[(a) When the Interstate Commerce Commission considers that a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title cannot transport the traffic offered to it in a manner that properly serves the public, the Commission may direct the handling, routing, and movement of the traffic of that carrier and its distribution over other railroad lines to promote commerce and service to the public. Subject to subsection (b)(2) of this section, the carriers may establish the terms of compensation between themselves.

[(b)(1) Except as provided in paragraph (2) of this subsection, the Commission may act under this section on its own initiative or on application without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

[(2) When the carriers do not agree on the terms of compensation under this section, the Commission may establish the terms for them in a later proceeding.

[§ 11125. Directed rail transportation

[(a) When a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title cannot transport the traffic offered to it because—

[(1) its cash position makes its continuing operation impossible;

[(2) transportation has been discontinued under court order; or

[(3) it has discontinued transportation without obtaining a required certificate under section 10903 of this title;

the Commission may direct the handling, routing, and movement of the traffic available to that carrier and its distribution over the railroad lines of that carrier by another carrier to promote service in the interest of the public and of commerce. Subject to subsection (b) of this section, the Commission may act without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

[(b)(1) Action of the Commission under subsection (a) of this section may not remain in effect for more than 60 days. However, the Commission may extend that period for an additional designated period of not more than 180 days if cause exists.

[(2) The Commission may not take action that would—

[(A) cause a directed carrier to operate in violation of chapter 201 of this title; or

[(B) impair substantially the ability of a directed carrier to serve its own patrons adequately, or to meet its outstanding common carrier obligations.

[(3) A directed carrier is not responsible, because of the direction of the Commission, for the debts of the other carrier.

[(4) A directed carrier shall hire the employees of the other carrier, to the extent that they previously provided that transportation for the other carrier, and assume the existing employment obligations and practices of the other carrier for those employees including agreements governing rate of pay, rules and working conditions, and employee protective conditions for the period during which the action of the Commission is effective.

[(5) A directed carrier may apply to the Commission for payment of an amount equal to the amount by which (A) the total expenses of that carrier incurred in or attributable to the handling, routing, and moving the traffic over the lines of the other carrier for the period during which the action of the Commission is effective, including renting or leasing necessary equipment, and an allocation of common expenses, overhead, and a reasonable profit, exceed (B) the direct revenues from handling, routing, and moving the traffic over the lines of the other carrier during that period. The carrier must submit a current record of those total expenses to the Commission. The Commission shall certify promptly, to the Secretary of the Treasury, the amount to be paid. The Secretary shall pay that amount by the 90th day after the end of the period during which

the direction of the Commission is effective, and funds are authorized to be appropriated for that payment. The Commission may audit any such record.

[§ 11126. Distribution of coal cars

[(a) Subject to subsection (b) of this section, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall make a reasonable distribution of cars for transportation of coal among the coal mines served by it whether the mines are located on its line or are customarily dependent on it for car supply. If the supply of available cars does not equal the requirements of the mines, the carrier shall maintain and apply reasonable ratings of the mines and count each car furnished to or used by a mine for transportation of coal against that mine. However, coal cars supplied by shippers or receivers are deemed not to be a part of the carrier's fleet and are not counted in determining a question about distribution or car count under subsection (b) of this section or section 10102, 10501, 10701–10703, 10707, 10721(b), 10722(c)–(d), 10723(a)–(b)(1), 10724(a), 10741–10744, 10746, 10749, 10750, 10901, 10902, 10907, 11101, 11103–11105, 11121–11125, 11127, 11128(a)(1), 11501(f), 11505(a), 11702(a)(1), 11703, 11901(d)–(e)(2), 11902, 11903, 11905, 11907, 11915, or 11916 of this title.

[(b)(1) In this subsection, "unit-train service" means the movement of a single shipment of coal of at least 4,500 tons, tendered to one carrier, on one bill of lading, at one origin, on one day, and destined to one consignee, at one plant, at one destination, over one route.

[(2) Unit-train service and non-unit-train service are deemed to be separate and distinct classes of service. A distinction shall be made between them and between the cars used in each class of service. A question about the reasonableness of, or discrimination in, the distribution of cars shall be determined within each class and not between them, notwithstanding a section referred to in subsection (a) of this section.

[§ 11127. Service of household goods freight forwarders

[(a)(1) When the Interstate Commerce Commission considers that a shortage of equipment, congestion of traffic, or other emergency requires immediate action at a place in the United States, the Commission may—

[(A) suspend any service, equipment, or facilities requirement applicable to a household goods freight forwarder under the jurisdiction of the Commission under subchapter IV of chapter 105 of this title;

[(B) take action to promote transportation in the interest of the public and of commerce; and

[(C) give directions for preference or priority in transportation, embargoes, or movement of traffic under permits.

[(2) When the Commission considers that any such household goods freight forwarder cannot properly serve the public by providing service for the traffic offered it, the Commission may require the handling, routing, and movement of that traffic in another manner to promote commerce and service to the public. When the

equipment or facilities of another household goods freight forwarder are required to be used, the household goods freight forwarders may establish terms of compensation between themselves subject to subsection (b)(2) of this section.

[(b)(1) Except as provided in paragraph (2) of this subsection, the Commission may act under this section on its own initiative or on application without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

[(2) When the household goods freight forwarders do not agree on the terms of compensation under this section, the Commission may establish the terms for them in a later proceeding.

[§ 11128. War emergencies; embargoes imposed by carriers

[(a)(1) When the President, during time of war or threatened war, certifies to the Interstate Commerce Commission 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 Commission shall direct that preference or priority be given to that traffic under sections 11123(a)(4) and 11127(a)(1)(C) of this title.

[(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 carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall adopt every means within their control to facilitate and expedite the military traffic.

[(b) An embargo imposed by any such carrier does not apply to shipments consigned to agents of the United States Government for its use. The carrier shall deliver those shipments as promptly as possible.

[SUBCHAPTER III—REPORTS AND RECORDS

[§ 11141. Definitions

[In this subchapter—

[(1) "carrier", "broker", and "lessor" include a receiver or trustee of a carrier (except a household goods freight forwarder), broker, and lessor, respectively.

[(2) "lessor" means a person owning a railroad, water line, or a pipeline that is leased to and operated by a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, and a person leasing a right to operate as a motor carrier or water carrier to another.

[(3) "association" means an organization maintained—

[(A) by or in the interest of a group of carriers (except water carriers) or brokers providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title that performs a service, or engages in activities, related to transportation under this subtitle; or

[(B) only by water carriers providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title that engages in ac-

tivities related to the fixing of rates, publication of classifications, or filing of tariffs by water carriers.

[§ 11142. Uniform accounting system

[The Interstate Commerce Commission may prescribe a uniform accounting system for classes of carriers providing, and brokers for, transportation subject to the jurisdiction of the Commission under subchapters II, III, and IV of chapter 105 of this title.

[§ 11143. Depreciation charges

[The Interstate Commerce Commission shall, for a class of carriers providing transportation subject to its jurisdiction under subchapter I or III of chapter 105 of this title, and may, for a class of carriers providing transportation subject to its jurisdiction under subchapter II of that chapter, 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 Commission may classify those carriers for purposes of this section. A 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 Commission;

[(2) charge another rate of depreciation; or

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

[§ 11144. Records: form; inspection; preservation

[(a) The Interstate Commerce Commission may prescribe the form of records required to be prepared or compiled under this subchapter—

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

[(2) by persons furnishing cars or protective service against heat or cold to or for a rail or express carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to the extent related to those cars or that service.

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

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

[(2) inspect and copy any record of—

[(A) a carrier, broker, lessor, or association;

[(B) a person controlling, controlled by, or under common control with a carrier if the Commission considers inspection relevant to that person's relation to, or transaction with, that carrier; and

[(C) a person furnishing cars or protective service against heat or cold to or for a rail or express carrier if the Commission prescribed the form of that record.

[(c) [Repealed]

[(d) The Commission may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers, brokers, lessors, and persons furnishing cars or protective services.

[§ 11145. Reports by carriers, lessors, and associations

[(a) The Interstate Commerce Commission may require—

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

[(2) a person furnishing cars or protective services against heat or cold to a rail or express carrier providing transportation subject to this subtitle, to file reports with the Commission containing answers to questions about those cars or services.

[(b)(1) An annual report shall contain an account, in as much detail as the Commission may require, of the affairs of the carrier, broker, lessor, or association for the 12-month period ending on the 31st day of December of each year. However, when an annual report is made by a motor carrier, a broker, or a lessor or an association maintained by or interested in one of them, the person making the report may elect to make it for the 13-month period accounting year ending at the close of one of the last 7 days of each calendar year if the books of the person making the report are kept by that person on the basis of that accounting year.

[(2) An annual report shall be filed with the Commission by the end of the 3d month after the end of the year for which the report is made unless the Commission extends the filing date or changes the period covered by the report. The annual report and, if the Commission requires, any other report made under this section, shall be made under oath.

[(c) The Commission shall streamline and simplify, to the maximum extent practicable, the reporting requirements applicable under this subchapter to motor common carriers of property with respect to transportation provided under certificates to which the provisions of section 10922(b)(4)(E) of this title apply and to motor contract carriers of property with respect to transportation provided under permits to which the provisions of section 10923(b)(5) of this title apply.

[SUBCHAPTER IV—RAILROAD COST ACCOUNTING

[§ 11161. Railroad Accounting Principles Board

[(a)(1) There is established a Railroad Accounting Principles Board which shall be within and responsible to the legislative branch of the Federal Government.

[(2) The Board shall be composed of the Comptroller General of the United States, who shall serve as chairman, and six members to be appointed by the Comptroller General.

[(3) The Comptroller General shall appoint members of the Board from among persons who are well qualified for such position by virtue of experience in or knowledge of rate regulation, account-

ing, or cost determinations. Of the members of the Board so appointed—

[(A) one shall be from the accounting profession;

[(B) one shall be from the railroad industry;

[(C) one shall be a representative of major rail shippers;

[(D) one shall be from the Interstate Commerce Commission;

[(E) one shall be a representative of small rail shippers; and

[(F) one shall be from the economics profession.

[(4) The term of office of each appointed member of the Board shall be three years, except that any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.

[(5) The Board shall not act in the absence of a quorum, which shall consist of three members.

[(b) Each appointed member of the Board shall receive compensation at a rate equal to 1/260 of the rate prescribed for level IV of the Executive Schedule, under section 5315 of title 5, for each day (including traveltime) in which he is engaged in the actual performance of duties vested in the Board.

[(c)(1) The Board may utilize personnel from the Federal Government, with the consent of the head of the appropriate Federal department or agency, or appoint individuals from private life, to serve on advisory committees or to provide the staff services necessary to assist the Board in carrying out its functions and responsibilities under this subchapter.

[(2) Individuals appointed by the Board under this subsection may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

[(d) All Federal departments and agencies are authorized to cooperate with the Board and to furnish information, appropriate personnel (with or without reimbursement), and such financial and other assistance as may be agreed upon by the Board and the Federal department or agency involved.

[(e) Members and employees of the Board and all other individuals appointed under this subsection having or having had access to information in the possession of the Board shall be subject to the provisions of section 1905 of title 18.

[(f) The Board shall cease to exist three years after the effective date of the Staggers Rail Act of 1980.

[§ 11162. Cost accounting principles

[(a) Within two years after the effective date of the Staggers Rail Act of 1980, the Railroad Accounting Principles Board shall establish, for rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, principles governing the determination of economically accurate railroad costs directly and indirectly associated with particular movements of goods, including the variable costs associated with particular movements of goods or such other costs as the Board believes most accurately represent the economic costs of such movements. Such principles shall govern the deter-

mination of all railroad costs for specific regulatory proceedings under this subtitle.

[(b) In developing cost accounting principles under this section, the Board shall take into account the following considerations:

[(1) The specific regulatory purposes for which railroad costs are required.

[(2) The degree of accuracy of the cost information which is needed to meet regulatory purposes.

[(3) The existing capability and the probable future capability of rail carriers to provide such information and the relative benefits and costs of requiring development of additional capability.

[(4) The means by which the degree of economic accuracy required can be obtained at the least possible expense and with the least possible information reporting.

[(5) The means by which the confidentiality of such costs can best be maintained while meeting the need for such information in regulatory proceedings.

[(c) The cost accounting principles established by the Board shall require that cost information be reported or disclosed only for the essential regulatory purposes defined by the Board.

[§ 11163. Implementation of cost accounting principles

[Upon the establishment of cost accounting principles by the Railroad Accounting Principles Board under section 11162 of this title, the Interstate Commerce Commission shall promptly promulgate rules to implement and enforce such principles. Not less than once every five years after the promulgation of the original rules, the Commission shall review the principles of the Board and shall, by rule, make such changes in such principles as are required to achieve the regulatory purposes of this subtitle and the goals of this subchapter. The Commission 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.

[§ 11164. Certification of rail carrier cost accounting system

[(a) Within 180 days after the effective date of the Staggers Rail Act of 1980, each rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall file with the Commission a request for preliminary certification of its cost accounting system. The Commission shall grant such preliminary certification if it determines that the cost accounting system of such rail carrier is in compliance with the accounting standards of the Commission in effect on the day prior to the effective date of the Staggers Rail Act of 1980.

[(b)(1) As soon as practicable, but not later than 9 months, after the promulgation of rules by the Commission under section 11163 of this title, each rail carrier described in subsection (a) of this section shall file with the Commission a request for final certification of its cost accounting system developed to comply with this section.

[(2) Within 90 days, or such additional time as the Commission finds necessary, after a rail carrier files its request for final certifi-

cation under paragraph (1) of this subsection, the Commission shall grant such final certification to such carrier if the Commission determines that the cost accounting system of such carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title. If the Commission denies such final certification, the rail carrier shall revise its cost accounting system and file a new request for certification within 90 days after the date of such denial. The Commission shall thereupon grant final certification if it determines that such cost accounting system, as revised, is in compliance with such rules. If the Commission again denies final certification to the rail carrier, the Commission shall prescribe a cost accounting system which such carrier shall adopt within a reasonable time and which shall be considered a finally certified cost accounting system for purposes of this section.

[(c) Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Commission under section 11163 of this title.

[(d)(1) Certification under this section that the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title shall be valid until the promulgation of new rules by the Commission.

[(2) After the cost accounting system of a rail carrier is certified under this section, such rail carrier may, after notifying the Commission, make modifications in such system unless, within 60 days after the date of notification, the Commission finds such modifications to be inconsistent with the rules promulgated by the Commission under section 11163 of this title.

[(e) For purposes of determining whether the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission, the Commission 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.

[§ 11165. Cost availability

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

[§ 11166. Accounting and cost reporting

[(a) To obtain expense and revenue information for regulatory purposes, the Interstate Commerce Commission may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, 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. To the extent such rules are required solely to

provide expense and revenue information necessary for determining railroad costs in regulatory proceedings under this subtitle, such rules shall be promulgated in accordance with the cost accounting principles established by the Railroad Accounting Principles Board under section 11162 of this title.

[(b) Any reports required by the rules established by the Commission under this section shall include only information considered necessary for disclosure under the cost accounting principles established by the Board or under generally accepted accounting principles or the requirements of the Securities and Exchange Commission.

[§ 11167. Report

[The Railroad Accounting Principles Board shall, within 2 years after the effective date of the Staggers Rail Act of 1980, submit to the Congress a report setting forth any recommendations of the Board for appropriate legislative or administrative action in order to integrate the cost accounting principles and the cost accounting system certification process under this subchapter into existing rail carrier rate regulation under this subtitle, including determinations under section 10709 of this title.

[§ 11168. Authorization of appropriations

[There are authorized to be appropriated to carry out the provisions of this subchapter not to exceed $1,000,000 for the fiscal year ending September 30, 1981, not to exceed $1,000,000 for the fiscal year ending September 30, 1982, and not to exceed $1,000,000 for the fiscal year ending September 30, 1983.

[CHAPTER 113—FINANCE

[SUBCHAPTER I—CARRIER SECURITIES, EQUIPMENT TRUSTS, AND SECURITY INTERESTS

[Sec.
[11301. Authority of certain carriers to issue securities and assume obligations and liabilities.
[11303. Equipment trusts: recordation; evidence of indebtedness.
[11304. Security interests in certain motor vehicles.

[SUBCHAPTER II—OWNERSHIP

[11321. Limitation on ownership of certain water carriers.
[11322. Restrictions on officers and directors.
[11323. Limitation on ownership of other carriers by household goods freight forwarders.

[SUBCHAPTER III—COMBINATIONS

[11341. Scope of authority.
[11342. Limitation on pooling and division of transportation or earnings.
[11343. Consolidation, merger, and acquisition of control.
[11344. Consolidation, merger, and acquisition of control: general procedure and conditions of approval.
[11345. Consolidation, merger, and acquisition of control: rail carrier procedure.
[11345a. Consolidation, merger, and acquisition of control: motor carrier procedure.
[11346. Consolidation, merger, and acquisition of control: expedited rail carrier procedure.
[11347. Employee protective arrangements in transactions involving rail carriers.
[11348. Interstate Commerce Commission authority over noncarrier that acquires control of carrier.

[11349. Temporary operating approval for transactions involving motor and water carriers.
[11350. Responsibility of the Secretary of Transportation in certain transactions.
[11351. Supplemental orders.

[SUBCHAPTER IV—FINANCIAL STRUCTURE

[Sec.
[11361. Scope of authority: changes in financial structure.
[11362. Criteria for approval and authority.
[11363. Assent of holders of securities and certain other instruments.
[11364. Procedure.
[11365. Effect of change on other persons.
[11366. Reports.
[11367. Application of other laws.

[SUBCHAPTER I—CARRIER SECURITIES, EQUIPMENT TRUSTS, AND SECURITY INTERESTS

[§ 11301. Authority of certain carriers to issue securities and assume obligations and liabilities

[(a) In this section—

[(1) "carrier" means a rail or sleeping car carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title (except a street, suburban, or interurban electric railway not operated as a part of a general railroad system of transportation), and a corporation organized to provide transportation by rail carrier subject to that subchapter.

[(2) "security" means a share of capital stock, a bond, or other evidence of interest in, or indebtedness of, a carrier.

[(b)(1) Subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), and the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Commission has exclusive jurisdiction to approve the issuance of securities by a carrier and the assumption of an obligation or liability related to the securities of another person by a carrier. A carrier may not issue securities or assume those obligations or liabilities without the approval of the Commission. No other approval is required. A security issued or obligation or liability assumed by a carrier in violation of this subsection or in violation of a condition prescribed by the Commission under subsection (d) of this section is void. However, a security or obligation issued or assumed under authority of this section is not void for failure to comply with a procedural requirement of this section or other matter preceding entry of the order of the Commission.

[(2) Paragraph (1) of this subsection does not apply to notes issued by a carrier if the notes mature not more than 2 years after their date of issue and total (with all then outstanding notes having a maturity of not more than 2 years) not more than 5 percent of the par value of the then outstanding securities of that carrier. If the securities do not have a par value, the par value of those securities is the fair market value on the date of issue. Paragraph (1) of this subsection applies to a subsequent funding of notes referred to in this paragraph.

[(c)(1) A carrier issuing notes referred to in subsection (b)(2) of this section shall file a certificate of notification with the Commission by the end of the 10th day after they are issued. That notifica-

tion must include substantially the same matter required by the Commission for an application for authority to issue other securities.

[(2) A carrier that pledges, repledges, or otherwise disposes of a security referred to in an application for authority or a certificate of notification under this section as pledged or held unencumbered in the treasury of that carrier shall file a certificate of notification with the Commission by the end of the 10th day after it disposes of the security.

[(d)(1) The Commission may begin a proceeding under this section on application of a carrier. Before taking final action, the Commission must investigate the purpose and use of the securities issue or assumption and the proceeds from it. The Commission may approve any part of the application and may require the carrier to comply with appropriate conditions. After an application is approved under this section, the Commission may change a condition previously imposed or use that may be made of the securities or proceeds for good cause shown subject to the requirements of this section. The Commission may approve an application under this section only when it finds that the securities issue or assumption—

[(A) is for a lawful object within the corporate purpose of the carrier and reasonably appropriate for that purpose;

[(B) is compatible with the public interest;

[(C) is appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier; and

[(D) will not impair the financial ability of the carrier to provide the service.

[(2) An application or certificate must be made under oath and signed and filed for the carrier by a designated executive officer who knows the matters stated in the application or certificate. On receipt of an application of a carrier under this section, the Commission shall have a copy of the application served on the chief executive officer of each State in which that carrier operates. The appropriate authorities of those States are entitled to be admitted as parties to a proceeding under this section to represent the rights and interests of their people and States.

[(e) The Commission shall require a carrier that issues securities, including notes, under this section to submit reports to it. The reports must identify the disposition of those securities and the application of the proceeds from their disposition.

[(f) This section does not imply a guaranty or obligation of those securities by the United States Government. This section does not apply to securities issued or obligations or liabilities assumed by the United States Government, a State, or an instrumentality or political subdivision of one of them.

[§ 11303. 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 railroad cars, locomotives, or other rolling stock or vessels, intended for a use related to interstate com-

merce may be filed with the Interstate Commerce Commission. 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 may also be filed with the Commission. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Commission 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 Commission 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 Commission 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.

[§ 11304. Security interests in certain motor vehicles

[(a) In this section—

[(1) "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" 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" 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", 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) A security interest in a motor vehicle owned by, or in the possession and use of, a carrier having a certificate or permit issued under section 10922 or 10923 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.

[(c) This section does not affect a security interest perfected before January 1, 1959.

[SUBCHAPTER II—OWNERSHIP

[§ 11321. Limitation on ownership of certain water carriers

[(a)(1) Notwithstanding sections 11343 and 11344 of this title, a carrier or a person controlling, controlled by, or under common control with a rail, express, sleeping car, or pipeline carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not own, operate, control, or have an interest in a water common carrier or vessel carrying property or passengers on a water route with which it does or may compete for traffic.

[(2) The Commission may decide, after a full hearing, questions of fact related to competition or the possibility of competition under this subsection on application of a carrier. A carrier may file an application to determine whether an existing service violates this subsection and may request permission to continue operation of a vessel or that action be taken under subsection (b) of this section. The Commission may begin a proceeding under this subsection on its own initiative or on application of a shipper to investigate the operation of a vessel used by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter if the carrier has not applied to the Commission and had the question of competition or the possibility of competition determined under this subsection.

[(b) Notwithstanding subsection (a) of this section, the Commission may authorize a carrier providing transportation subject to the jurisdiction of the Commission under that subchapter to own, operate, control, or have an interest in a water common carrier or vessel that is not operated through the Panama Canal and with which the carrier does or may compete for traffic when the Commission finds that ownership, operation, control, or interest will still allow that water common carrier or vessel to be operated in the public

interest advantageously to interstate commerce and that it will still allow competition, without reduction, on the water route in question. However, section 11343 of this title also applies to a transaction or interest under this subsection if the transaction or interest is within the scope of that section. The Commission may begin a proceeding under this subsection on application of a carrier. An authorization under this subsection is not necessary for a carrier that obtained an order of extension before September 18, 1940, under section 5(21) of the Interstate Commerce Act (37 Stat. 567), as amended, if the order is still in effect.

[(c) The Commission may take action under this section only after a full hearing. An order entered as a result of the action may be conditioned on giving security for the payment of an amount of money or the discharge of an obligation that is required to be paid or discharged under that order.

[§ 11322. Restrictions on officers and directors

[(a) A person may hold the position of officer or director of more than one carrier as defined in section 11301(a)(1) of this title only when authorized by the Interstate Commerce Commission. The Commission 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) An officer or director of a carrier referred to in subsection (a) of this section may not—

[(1) receive, for the benefit of that officer or director, a thing of value in relation to the negotiation, hypothecation, or sale of a security issued or to be issued by that carrier;

[(2) share in the proceeds from the negotiation, hypothecation, or sale of a security issued or to be issued by that carrier; or

[(3) participate in making or paying dividends of an operating carrier from funds included in a capital account.

[§ 11323. Limitation on ownership of other carriers by household goods freight forwarders

[(a) A household goods freight forwarder, or a person controlling, controlled by, or under common control with a household goods freight forwarder, providing service subject to the jurisdiction of the Interstate Commerce Commission under subchapter IV of chapter 105 of this title, may not acquire control of a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter. However, this subsection does not prohibit a carrier providing transportation under subchapter I, II, or III of chapter 105 from acquiring control or another such carrier under subchapter III of this chapter but subject to section 11321.

[(b) A director, officer, employee, or agent of a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title or a person controlling, controlled by, or under common control with one of those carriers, may not, for that person's pecuniary benefit, own, lease, control, or hold stock in a household goods freight forwarder providing service subject to the jurisdiction of the Commission

under subchapter IV of that chapter. However, this subsection does not prohibit the holding of a director's qualifying shares of stock from which no personal pecuniary benefit is derived by the holder.

[(c) This subtitle does not prohibit a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title or a person controlling, controlled by, or under common control with one of those carriers from controlling a household goods freight forwarder. When that control exists, a rate, classification, rule, or practice of one of those carriers may not be found to be unlawful because of the relationship.

[SUBCHAPTER III—COMBINATIONS

[§ 11341. Scope of authority

[(a) The authority of the Interstate Commerce Commission under this subchapter is exclusive. A carrier or corporation participating in or resulting from a transaction approved by or exempted by the Commission 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 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 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.

[§ 11342. Limitation on pooling and division of transportation or earnings

[(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may not agree or combine with another of those carriers to pool or divide traffic or services or any part of their earnings without the approval of the Commission under this section or sections 11124 and 11125 of this title. Except as provided in subsection (b) for agreements or combinations between or among motor common carriers of property, the Commission may approve and authorize the agreement or combination if the carriers involved assent to the pooling or division

and the Commission 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)(1) Any motor common carrier of property may apply to the Commission for approval of an agreement or combination with another motor common carrier of property to pool or divide traffic or any services or any part of their earnings by filing such agreement or combination with the Commission not less than 50 days before its effective date. Prior to the effective date of the agreement or combination, the Commission 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 Commission determines that neither of these two 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 Commission may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Commission to be just and reasonable. If the Commission determines either that the agreement or combination is of major transportation importance or that there is a substantial likelihood that the agreement or combination will unduly restrain competition, the Commission 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 Commission 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 Commission may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Commission to be just and reasonable.

[(2) In the case of an application for Commission approval of an agreement or combination between a motor common 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 common carriers providing transportation of household goods to pool or divide traffic or services or any part of their earnings approved by the Commission before the date of enactment of this paragraph.

[(3) The Commission shall streamline, simplify, and expedite, to the maximum extent practicable, the process (including, but not limited to, any paperwork) for submission and approval of applica-

tions under this section for agreements and combinations between motor common carriers providing transportation of household goods and their agents.

[(c) The Commission may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the carriers.

[(d) This section affects an agreement or combination filed with the Commission before March 19, 1941, to which a water common carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title is a party only when the Commission determines that the agreement or combination does not meet the requirements for approval and authorization under subsection (a) of this section.

[(e) The Commission may begin a proceeding under this section on its own initiative or on application.

[§ 11343. Consolidation, merger, and acquisition of control

[(a) The following transactions involving carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I (except a pipeline carrier), II, or III of chapter 105 of this title may be carried out only with the approval and authorization of the Commission:

[(1) consolidation or merger of the properties or franchises of at least 2 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 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.

[(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 carriers, regardless of how that result is reached, only with the approval and authorization of the Commission 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 carrier has the effect of putting that carrier and person affiliated with it, taken together, in control of another carrier.

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

[(3) A transaction by at least 2 persons acting together (one of whom is a carrier or is affiliated with a carrier) has the effect of putting those persons and carriers and persons affiliated

with any of them, or with any of those affiliated carriers, taken together, in control of another carrier.

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

[(d)(1) Approval and authorization by the Commission are not required if the only parties to a transaction referred to in subsection (a) of this section are motor carriers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and the aggregate gross operating revenues of those carriers 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 covering the transaction. However, the approval and authorization of the Commission is required when a motor carrier that is controlled by or affiliated with a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter is a party to the transaction.

[(2) The approval and authorization of the Commission are not required if the only parties to a transaction referred to in subsection (a) of this section are street, suburban, or interurban electric railways that are not controlled by or under common control with a carrier that is operated as part of a general railroad system of transportation.

[(e)(1) Notwithstanding any provisions of this title, the Interstate Commerce Commission, in a matter related to a motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, may exempt a person, class of persons, transaction, or class of transactions from the merger, consolidation, and acquisition of control provisions of this subchapter if the Commission finds that—

[(A) the application of such provisions is not necessary to carry out the transportation policy of section 10101 of this title; and

[(B) either (i) the transaction is of limited scope, or (ii) the application of such provisions is not needed to protect shippers from the abuse of market power.

[(2) At least 60 days before any transaction exempt under this subsection from the merger, consolidation, and acquisition of control provisions of this subchapter may take effect, each carrier intending to participate in such transaction shall file with the Commission a notice of its intention to participate in such transaction and shall give public notice of such intention. The Commission shall prescribe the information to be contained in such notices, including the nature and scope of the transaction.

[(3) The Commission, on its own initiative or on complaint, may revoke an exemption granted under this subsection, to the extent it specifies, when it finds that application of the provisions of this section to the person, class of persons, or transportation is necessary to carry out the transportation policy of section 10101 of this title.

[(4) If the Commission, on its own initiative, finds that employees of any carrier intending to participate in a transaction exempt under this subsection from the merger, consolidation, and acquisition of control provisions of this subchapter are or will be adversely affected by such transaction or if employees of such carrier adversely affected by such transaction file a complaint concerning such transaction with the Commission, the Commission shall revoke such exemption to the extent the Commission deems necessary to review and address the adverse effects on such employees.

[§ 11344. Consolidation, merger, and acquisition of control: general procedure and conditions of approval

[(a) The Interstate Commerce Commission may begin a proceeding to approve and authorize a transaction referred to in section 11343 of this title on application of the person seeking that authority. When an application is filed with the Commission, the Commission shall notify the chief executive officer of each State in which property of the carriers involved in the proposed transaction is located and shall notify those carriers. If a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of the chapter 105 of this title is involved in the transaction, the Commission must notify the persons specified in section 10328(b) of this title. The Commission shall hold a public hearing when a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter is involved in the transaction unless the Commission determines that a public hearing is not necessary in the public interest.

[(b)(1) In a proceeding under this section which involves the merger or control of at least two class I railroads, as defined by the Commission, the Commission shall consider at least the following:

[(A) the effect of the proposed transaction on the adequacy of transportation to the public.

[(B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

[(C) the total fixed charges that result from the proposed transaction.

[(D) the interest of carrier employees affected by the proposed transaction.

[(E) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

[(2) In a proceeding under this section which involves only carriers of passengers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title, the Commission shall consider at least the following:

[(A) the effect of the proposed transaction on the adequacy of transportation to the public.

[(B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

[(C) the total fixed charges that result from the proposed transaction.

[(D) the interest of carrier employees affected by the proposed transaction.

[(c) The Commission shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Commission may impose conditions governing the transaction. 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 Commission may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. When a rail carrier, or a person controlled by or affiliated with a rail carrier, is an applicant and the transaction involves a motor carrier, the Commission may approve and authorize the transaction only if it finds that the transaction is consistent with the public interest, will enable the rail carrier to use motor carrier transportation to public advantage in its operations, and will not unreasonably restrain competition. When a rail carrier is involved in the transaction, the Commission may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Commission 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 Commission, the Commission 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 Commission 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 Secretary of Transportation. The provisions of this subsection do not apply to any proceeding under this section which involves only carriers of passengers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title.

[(e) A rail carrier, or a person controlled by or affiliated with a rail carrier, together with one or more affected shippers, may apply for approval under this subsection of a transaction for the purpose of providing motor carrier transportation prior or subsequent to rail transportation to serve inadequately served shippers located on a railroad other than the applicant carrier. Such application shall be approved by the Commission if the applicants demonstrate presently impaired rail service and inadequate motor common carrier service which results in the serious failure of the rail carrier serving the shippers to meet the rail equipment or transportation schedules of shippers or seriously to fail otherwise to provide adequate normal rail services required by shippers and which shippers would reasonably expect the rail carrier to provide. The Commis-

sion shall approve or disapprove applications under this subsection within 30 days after receipt of such application. The Commission shall approve applications which are not protested by interested parties within 30 days following receipt of such application.

[§ 11345. Consolidation, merger, and acquisition of control: rail carrier procedure

[(a) If a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title is involved in a proposed transaction under section 11343 of this title, this section and section 11344 of this title also apply to the transaction. The Commission shall publish notice of the application in the Federal Register by the end of the 30th day after the application is filed with the Commission and after a certified copy of it is furnished to the Secretary of Transportation. However, if the application is incomplete, the Commission shall reject it by the end of that period. The order of rejection is a final action of the Commission under section 10327 of this title. 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 Commission, 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 Commission:

[(1) Written comments about an application may be filed with the Commission 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 Secretary of Transportation and the Attorney General, each of whom 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 Commission by the end of the 15th day after the date of receipt of the written comments.

[(2) The Commission 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 and given to the Secretary of Transportation by the 90th day after publication of notice under that subsection.

[(3) The Commission must conclude evidentiary proceedings by the end of the 24th month after the date of publication of notice under subsection (a) of this section. The Commission must issue a final decision by the 180th 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 Commission, which the Commission has determined to be of regional or national transportation significance:

[(1) Written comments about an application may be filed with the Commission within 30 days after notice of the application is published under subsection (a) of this section. Copies of such comments shall be served on the Secretary of Transportation and the Attorney General, each of whom 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 Commission by the end of the 15th day after the date of receipt of the written comments.

[(2) The Commission 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 and given to the Secretary of Transportation by the 60th day after publication of notice under that subsection.

[(3) The Commission must conclude any evidentiary proceedings by the 180th day after the date of publication of notice under subsection (a) of this section. The Commission 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:

[(1) Written comments about an application may be filed with the Commission within 30 days after notice of the application is published under subsection (a) of this section. Copies of such comments shall be served on the Secretary of Transportation and the Attorney General, each of whom 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 Commission by the end of the 15th day after the date of receipt of the written comments.

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

[(e) If the Commission does not issue a decision that is a final action under section 10327 of this title, it shall send written notice to Congress that a decision was not issued and the reasons why it was not issued.

[(f) The Commission may waive the requirement that an initial decision be made under section 10327 of this title and make a final decision itself when it determines that action is required for the timely execution of its functions under this subchapter or that an application governed by this section is of major transportation im-

portance. The decision of the Commission under this subsection is a final action under section 10327 of this title.

[§ 11345a. Consolidation, merger, and acquisition of control: motor carrier procedure

[(a) If a motor carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title is involved in a proposed transaction under section 11343 of this title, this section and section 11344 of this title also apply to the transaction. The Commission shall publish notice of the application in the Federal Register by the end of the 30th day after the application is filed with the Commission. However, if the application is incomplete, the Commission shall reject it by the end of that period. The order of rejection is a final decision of the Commission under section 10322 of this title.

[(b) Written comments about an application may be filed with the Commission within 45 days after notice of the application is published under subsection (a) of this section.

[(c) The Commission must conclude evidentiary proceedings by the 240th day after the date of publication of notice under subsection (a) of this section. The Commission must issue a final decision by the 180th day after the date it concludes the evidentiary proceedings. In extraordinary circumstances, the Commission may extend a time period established by this section, except that the total of all such extensions with respect to any application shall not exceed 90 days.

[(d) The Commission may waive the requirement that an initial decision be made under section 10322 of this title and make a final decision itself when it determines that action is required for the timely execution of its functions under this subchapter or that an application governed by this section is of major transportation importance. The decision of the Commission under this subsection is a final decision under section 10322 of this title.

[§ 11346. Consolidation, merger, and acquisition of control: expedited rail carrier procedure

[(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title or the Secretary of Transportation may apply, before January 1, 1982, for authority for and approval of a merger, consolidation, unification or coordination project (as described in section 333(c) of this title), joint use of tracks or other facilities, or acquisition or sale of assets involving one of those rail carriers, under this section instead of sections 11344 and 11345 of this title. The Secretary may apply under this section only when the parties to the application that are rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter consent to an application by the Secretary. A rail carrier may apply under this section only if it sent the proposed transaction to the Secretary for a report under section 11350 of this title at least 6 months before applying under this section.

[(b) When the Commission notifies persons required to receive notice that an application has been filed under this section, the Commission must include in the notice a copy of the application, a summary of the proposed transaction, and the applicant's reasons and public interest justification for the transaction. When the Commission notifies the Secretary of Transportation that an application has been filed under this section, the Commission shall also request the report of the Secretary prepared under section 11350 of this title. By the 10th day after receiving an application under this section, the Commission shall send notice of the proposed transaction to—

[(1) the chief executive officer of each State that may be affected by the execution or implementation of the proposed transaction;

[(2) the Attorney General;

[(3) the Secretary of Labor; and

[(4) the Secretary of Transportation (unless the Secretary is the applicant under subsection (a) of this section).

[(c) The Commission shall designate a panel of the Commission to make a recommended decision on each application under this section. The panel must begin a proceeding by the 90th day after the date the Commission receives the application, complete the proceeding by the 180th day after the application is referred to it, and give its recommended decision and certify the record to the entire Commission by the 90th day after the proceeding is completed. The panel may use employees appointed under section 3105 of title 5 and the Rail Services Planning Office in conducting the proceeding, evaluating the application and comments received about it, and determining whether it is in the public interest to approve and authorize the transaction under the last sentence of subsection (d) of this section. To carry out this subsection, the panel may make rules and rulings to avoid unnecessary costs and delay. In making its recommended decision, the panel shall—

[(1) request the views of the Secretary of Transportation about the effect of the transaction on the national transportation policy, as stated by the Secretary, and consider the report submitted under section 11350 of this title;

[(2) request the views of the Attorney General about the effect of the transaction on competition; and

[(3) request the views of the Secretary of Labor about the effect of the transaction on rail carrier employees, particularly whether the proposal contains adequate employee protection provisions.

The Secretaries and the Attorney General shall send their written views to the panel. Those statements are available to the public under section 552(a) of title 5.

[(d) When the recommended decision and record of a proceeding under this section are certified to the entire Commission, it must hear oral argument on the matter certified to it and make a final decision by the 120th day after receiving the recommended decision and record. The Commission may extend a time period under subsection (c) of this section or under this subsection but must make its final decision by the end of the 2d year after receipt of the application by the Commission. The Commission shall consider the re-

port of the Secretary of Transportation under section 11350 of this title in making its final decision. The final decision must be accompanied by a written opinion stating the reasons for the Commission action. The Commission may—

[(1) approve the transaction if the Commission determines the transaction is in the public interest;

[(2) approve the transaction with conditions and modifications that it determines are in the public interest; or

[(3) disapprove the transaction if it determines the transaction is not in the public interest.

[§ 11347. Employee protective arrangements in transactions involving rail carriers

[When a rail carrier is involved in a transaction for which approval is sought under sections 11344 and 11345 or section 11346 of this title, the Interstate Commerce Commission shall require the 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 this section before February 5, 1976, and the terms established under sections 24307(c), 24312, and 24706(c) of this title. Notwithstanding this subtitle, 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 Commission (or if an employee was employed for a lesser period of time by the carrier before the action became effective, for that lesser period).

[§ 11348. Interstate Commerce Commission authority over non-carrier that acquires control of carrier

[(a) When the Interstate Commerce Commission approves and authorizes a transaction under sections 11344 and 11345 of this title in which a person not a carrier providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title acquires control of at least one carrier subject to the jurisdiction of the Commission, 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 Commission: sections 504(f), 10764, subchapter III of chapter 111, and sections 11301, 11709, 11901(f), (m)(1), 11909(a)(1), (b), and 11911(a).

[(b) When a person subject to sections 11301, 11322, 11709, and 11911 of this title because of acquiring control of a carrier, applies to the Commission for authority to issue securities or assume obligations or liabilities under those sections, the Commission may authorize the issue or assumption only when it finds the issue or assumption—

[(1) is consistent with the proper performance of public transportation by the carrier that is controlled by that person;

[(2) will not impair the ability of the carrier to provide public transportation; and

[(3) is consistent with the public interest in other respects.

[§ 11349. Temporary operating approval for transactions involving motor and water carriers

[(a) Pending determination of an application filed with the Interstate Commerce Commission under this subchapter for approval of a consolidation or merger of the properties of at least 2 motor carriers or at least 2 water carriers, or of a purchase, lease, or contract to operate the properties of at least one motor carrier or at least one water carrier, the Commission 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. The Commission may approve operation of motor carrier properties when it appears that failure to grant the approval may result in destruction of or injury to those motor carrier properties the person is seeking to acquire, or substantially interfere with their future usefulness in providing adequate and continuous service to the public. The Commission may approve the operation of water carrier properties only for good cause shown.

[(b) The Commission may take action under subsection (a) of this section without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5. Transportation provided by a motor carrier under a grant of approval under this section is subject to this subtitle.

[§ 11350. Responsibility of the Secretary of Transportation in certain transactions

[(a) When a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title sends a proposed transaction to the Secretary of Transportation under section 11346(a) of this title or the Secretary develops a proposed transaction for submission to the Commission under that section, the Secretary shall publish a summary and a detailed account of the transaction in the Federal Register and give notice of the transaction to the Attorney General and to the chief executive officer of each State in which property of a rail carrier involved in the transaction is located. The Secretary shall initiate an informal proceeding on the proposed transaction under section 553 of title 5.

[(b) By the 10th day after an application is submitted to the Commission under section 11346 of this title, the Secretary shall complete and send to the Commission a study of the proposed transaction about—

[(1) the needs of rail transportation in the geographical area affected by the transaction;

[(2) the effect of the transaction on competition in rail transportation and other modes of transportation in the geographical area affected by the transaction;

[(3) the environmental impact of the transaction and of alternative choices of action;

[(4) the effect of the transaction on employment;

[(5) the cost of rehabilitation and modernization of track, equipment, and other facilities, with a comparison of the potential savings or losses from other possible choices of action;

[(6) the rationalization of the rail system;

[(7) the impact of the transaction on shippers, consumers, and rail carrier employees;

[(8) the effect of the transaction on communities in the geographical area affected by the transaction and on geographical areas contiguous to the affected areas; and

[(9) whether the proposed transaction will improve rail service.

[§ 11351. Supplemental orders

[When cause exists, the Interstate Commerce Commission may make appropriate orders supplemental to an order made in a proceeding under sections 11342–11345 and 11347 of this title.

[SUBCHAPTER IV—FINANCIAL STRUCTURE

[§ 11361. Scope of authority: changes in financial structure

[(a) The authority of the Interstate Commerce Commission to act under this subchapter is exclusive. The Commission may approve and authorize a carrier, as defined in section 11301(a)(1) of this title, to change (1) a part of a class of its securities, as defined in section 11301(a)(2) of this title, or (2) a part of an instrument under which a class of its securities is issued or a class of its obligations is secured. When a change is approved and authorized by the Commission under this subchapter, the carrier may carry out the change notwithstanding an express provision in the affected instrument or a State law and without getting other approval from the Commission or from a State authority. A person participating in carrying out a change that is approved and authorized under this subchapter is exempt from all other law, including State and municipal law, as necessary to let that person carry out the change.

[(b) The Commission may not approve an application filed under this section by a carrier that is in equity receivership or reorganization under subchapter IV of chapter 11 of title 11.

[(c) A power granted to a carrier under this subchapter changes its powers under its corporate charter and under State law.

[(d) This subchapter does not affect the negotiability of a security of a carrier or of the obligation of a carrier that assumed liability related to a security. This subchapter does not apply to an equipment-trust certificate under which a carrier is obligated, to an evidence of indebtedness of a carrier the payment of which is secured solely by equipment, or to another instrument under which that equipment-trust certificate or evidence of indebtedness was issued or by which either of them is secured.

[§ 11362. Criteria for approval and authority

[(a) A carrier may apply to the Interstate Commerce Commission for approval and authority to make a change under this subchapter. To approve a proposed change, the Commission must find that the proposed change—

[(1) is within the scope of section 11361 of this title;

[(2) will be in the public interest;

[(3) will be in the best interests of the carrier, of each class of its stockholders, and of the holders of each class of the carrier's obligations that are affected by the change; and

[(4) will not be against the interests of a creditor of the carrier who is not affected by the change.

If the change involves an issuance of securities, the Commission must also make the findings required under section 11301(d)(1) of this title.

[(b)(1) The Commission shall begin a proceeding under this section on receipt of an application but may require an applicant to get assurances of assent to the change from the holders of the outstanding shares of the securities that will be affected by the change before continuing with the proceeding. The Commission may determine the percentage of the principal amount or number of those shares needed to establish assurance of assent to the change. A class of securities is considered to be affected by a proposed change only if the change is proposed to a part of that class or to a part of an instrument under which that class was issued or by which it is secured. However, if a proposed change is to an instrument under which at least 2 classes of securities were issued and are outstanding or secured by that instrument, only those classes to which the change is related are considered to be affected. The Commission shall divide the securities to be affected by a proposed change under this subchapter into reasonable classes for purposes of this subchapter.

[(2) On receipt of an application of a carrier under this section the Commission shall notify, and file a copy of the application with, the chief executive officer of each State in which that carrier operates. The appropriate authorities of those States are entitled to be admitted as parties to a proceeding under this section to represent the rights and interests of their people and States.

[(c) The carrier must give notice of the proceeding to the holders of the class of securities affected. The Commission may direct the carrier to give notice to other persons the Commission determines to have an interest in the proceeding. The carrier may give notice under this subsection only after it gets assurances of assent when they are required under this section.

[(d) The Commission may impose conditions governing the proposed change. The Commission may determine the effective date for a change it approves and authorizes under this subchapter and may allow it to become effective on publication of a declaration to that effect by the carrier. After an application is approved, the Commission may change a condition imposed and impose supplemental requirements for good cause shown subject to the requirements of this subchapter.

[§ 11363. Assent of holders of securities and certain other instruments

[(a)(1) After making the findings required under section 11362(a) of this title, the Commission may approve and authorize the change if it is assented to by the holders of at least 75 percent of the aggregate principal amount or number of outstanding shares of each class of securities affected by the change. The Commission may increase the percentage required for assent under this sub-

section for a class of shares when an increase is in the public interest and—

[(A) 75 percent of the shares in that class are held by less than 25 security holders; or

[(B) that class is entitled to vote for the election of directors of the carrier and the Commission determines that the assent of at least 25 percent of the security holders of that class are controlled by the carrier or a person controlling the carrier.

[(2) The carrier may withdraw its application after the Commission makes the findings required under section 11362(a) of this title. If the application is not withdrawn, the Commission must require the carrier to submit the proposed change, with conditions imposed by the Commission, to the holders of each class of its securities affected by the change for their assent or rejection.

[(b)(1) In determining the percentage of outstanding securities when making a finding under section 11362(a) of this title, a security that secures an evidence of indebtedness of the carrier or of a company controlling or controlled by the carrier is considered to be outstanding unless the Commission determines that the proposed change does not materially affect the interest of the holder of that evidence of indebtedness. When that security is considered to be outstanding, assent to a proposed change may be given, notwithstanding another instrument, only—

[(A) if the security is pledged as security under an instrument under which an evidence of indebtedness was issued and is outstanding, by the holder of a majority of the principal amount of the evidence of indebtedness; or

[(B) if the security secures an evidence of indebtedness not issued under an instrument under which an evidence of indebtedness was issued, by the holder of the evidence of indebtedness.

[(2) In addition to a submission required under subsection (a) of this section, the Commission shall require the carrier to submit a proposed change to a security referred to in this subsection, with requirements imposed by the Commission, to the holder of the evidence of indebtedness referred to in paragraph (1) (A) and (B) of this subsection as appropriate, for assent or rejection. A carrier is not required to submit the change to the trustee of the instrument referred to in that paragraph.

[(c) If the Commission determines that the assent of the holder of a security not entitled to vote for the election of directors of the carrier or an evidence of indebtedness is in the control of the carrier or of a person controlling the carrier, that security or evidence of indebtedness is not considered to be outstanding.

[§ 11364. Procedure

[(a) The Commission may prescribe the manner in which assents, assurances of assent, or rejections of the security holders may be solicited whether the solicitation is made before or after the Commission approves and authorizes the proposed change.

[(b) The Commission may approve a bank or trust company, incorporated under the law of the United States or a State, that is a member of the Federal Reserve System and has a capital and surplus of at least $2,000,000, to receive assents and revocations of

assents from security holders. The Commission may require the security holders to send those assents and revocations to that bank or trust company. That bank or trust company shall certify the result of the submission to the Commission. The Commission may rely on that certification as conclusive evidence in determining the result of that submission.

[§ 11365. Effect of change on other persons

[(a) When a change becomes effective under this subchapter, the change is binding on, and changes the rights of—

[(1) each holder of a security of the carrier of each class affected by the change; and

[(2) a trustee or other party to an instrument under which a class of securities has been issued or by which it is secured.

[(b) An authorization and approval of a change under this subchapter is authority for, and approval of, a corresponding change of the obligation of another carrier that assumed liability related to that class of securities if that carrier consents to the change in writing. When consent is given, the corresponding change becomes effective when the change of the class of securities or instrument becomes binding. A person who is liable or obligated on a class of securities issued by a carrier is a carrier with respect to that class for the purposes of this subchapter.

[§ 11366. Reports

[A carrier receiving approval and authorization to make a change under this subchapter shall report the action taken by it in making that change to the Interstate Commerce Commission. The Commission may require periodic or special reports.

[§ 11367. Application of other laws

[(a) Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) does not apply to a solicitation related to a proposed change under this subchapter.

[(b) If the Interstate Commerce Commission finds an issuance of a security, that is an interest in a railroad equipment trust as defined in section 3(a)(6) of the Securities Act of 1933 (15 U.S.C. 77c(a)(6)), under this subchapter complies with section 11301 of this title, it is considered to be an issuance subject to section 11301 within the meaning of section 3(a)(6). Section 5 of that Act (15 U.S.C. 77e) does not apply to the issuance, sale, or exchange of certificates of deposit representing securities of, or claims against, a carrier that are issued by committees in proceedings under this subchapter. Those certificates and transactions under this subchapter are exempt from that Act (15 U.S.C. 77a et seq.).

[CHAPTER 115—FEDERAL-STATE RELATIONS

[Sec.

[11501. Interstate Commerce Commission authority over intrastate transportation.
[11502. Conferences and joint hearings with State authorities.
[11503. Tax discrimination against rail transportation property.
[11503a. Tax discrimination against motor carrier transportation property.
[11504. Withholding State and local income tax by certain carriers.
[11505. State action to enjoin rail carriers from certain actions.

[11506. Registration of motor carriers by a State.
[11507. Prison-made property governed by State law.

[§ 11501. Interstate Commerce Commission authority over intrastate transportation

[(a) The Interstate Commerce Commission shall prescribe the rate, classification, rule, or practice for transportation or service provided by a household goods freight forwarder subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title when the Commission finds that a rate, classification, rule, or practice of a State causes—

[(1) between persons or localities in intrastate commerce and in interstate and foreign commerce, unreasonable discrimination against those persons or localities in interstate or foreign commerce; or

[(2) unreasonable discrimination against or imposes an unreasonable burden on interstate or foreign commerce.

[(b)(1) A State authority may only exercise jurisdiction over intrastate transportation provided by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title if such State authority exercises such jurisdiction exclusively in accordance with the provisions of this subtitle.

[(2) Within 120 days after the effective date of the Staggers Rail Act of 1980, each State authority exercising jurisdiction over intrastate rates, classifications, rules, and practices for intrastate transportation described in paragraph (1) of this subsection shall submit to the Commission the standards and procedures (including timing requirements) used by such State authority in exercising such jurisdiction.

[(3)(A) Within 90 days after receipt of the intrastate regulatory rate standards and procedures of a State authority under paragraph (2) of this subsection, the Commission shall certify such State authority for purposes of this subsection if the Commission determines that such standards and procedures are in accordance with the standards and procedures applicable to regulation of rail carriers by the Commission under this subtitle. If the Commission determines that such standards and procedures are not in such accordance, it shall deny certification to such State authority, and such State authority may resubmit new standards and procedures to the Commission for review in accordance with this subsection.

[(B) The standards and procedures existing in each State on the effective date of the Staggers Rail Act of 1980 for the exercise of jurisdiction over intrastate rail rates, classifications, rules, and practices shall be deemed to be certified by the Commission from that date until the date an initial determination is made by the Commission under subparagraph (A) of this paragraph.

[(4)(A) Any State authority which is certified by the Commission under this subsection may use its standards and procedures in exercising jurisdiction over intrastate rail rates, classifications, rules, and practices during the 5-year period commencing on the date of such certification. Any State authority which is denied certification or which does not seek certification may not exercise any jurisdic-

tion over intrastate rates, classifications, rules, and practices until it receives certification under this subsection.

[(B) Any intrastate transportation provided by a rail carrier in a State which may not exercise jurisdiction over an intrastate rate, classification, rule, or practice of that carrier due to a denial of certification under this subsection shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

[(5)(A) Certification of a State authority under this subsection is valid for the 5-year period beginning on the date of such certification. Prior to the expiration of such 5-year period, the State authority shall resubmit its intrastate regulatory standards procedures to the Commission for subsequent certification in accordance with this subsection.

[(B) During any 5-year certification period, a State may not change its certified standards and procedures without notifying and receiving express approval from the Commission.

[(6) Notwithstanding any other provision of this subtitle, a State authority may not exercise any jurisdiction over general rate increases under section 10706 of this title, inflation-based rate increases under section 10712 of this title, or fuel adjustment surcharges approved by the Commission.

[(c) Any rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may petition the Commission to review the decision of any State authority, in any administrative proceeding in which the lawfulness of an intrastate rate, classification, rule, or practice is determined, on the grounds that the standards and procedures applied by the State were not in accordance with the provisions of this subtitle. The Commission shall take final action on any such petition within 30 days after the date it is received. If the Commission determines that the standards and procedures were not in accordance with the provisions of this subtitle, its order shall determine and authorize the carrier to establish the appropriate rate, classification, rule, or practice.

[(d)(1) The Commission has exclusive authority to prescribe an intrastate rate for transportation provided by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title when—

[(A) a rail carrier files with an appropriate State authority a change in an intrastate rate, or a change in a classification, rule, or practice that has the effect of changing an intrastate rate, that adjusts the rate to the rate charged on similar traffic moving in interstate or foreign commerce; and

[(B) the State authority does not act finally on the change by the 120th day after it was filed.

[(2) When a rail carrier files an application with the Commission under this subsection, the Commission shall prescribe the intrastate rate under the standards of subsection (a) of this section and chapter 107 of this title. Notice of the application shall be served on the State authority.

[(e) No State or political subdivision thereof and no interstate agency or other political agency of two 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 provided by motor common carrier of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title on an authorized interstate route or relating to the implementation of any reduction in the rates for such 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.

[(f) The Commission may take action (1) under this section only after a full hearing, or (2) with respect to a rate, rule, or practice of a motor common carrier of passengers, in accordance with the procedures established by the Commission under subsection (e)(3)(B) of this section. Action of the Commission under this section supersedes State law or action taken under State law in conflict with the action of the Commission.

[(g) PREEMPTION OF STATE REGULATION OF FREIGHT FORWARDERS.—

[(1) GENERAL RULE.—Subject to paragraph (2) of this subject, no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to interstate rates, interstate routes, or interstate services of any freight forwarder.

[(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.

[(h) PREEMPTION OF STATE ECONOMIC REGULATION OF MOTOR CARRIERS.—

[(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) of this title) or any motor private carrier 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; and

[(B) does not apply to the transportation of household goods.

[(3) STATE STANDARD TRANSPORTATION PRACTICES.—

[(A) CONTINUATION.—Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or po-

litical 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, or

[(iv) antitrust immunity for joint line rates or routes, classifications and mileage guides,

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 subtitle or a regulation issued by the Interstate Commerce Commission or the Secretary of Transportation under this subtitle; 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.

[§ 11502. Conferences and joint hearings with State authorities

[(a)(1) In carrying out this subtitle as it applies to a class of persons providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, III, or IV of chapter 105 of this title, the Commission may—

[(A) confer and hold joint hearings with the State authorities having regulatory jurisdiction of that class when the conference or hearing is related to an investigation of the relationship between rate structures and practices of carriers providing transportation or service subject to the jurisdiction of the State authorities and of the Commission, and the Commission may take action as a result of the investigation that may affect the rulemaking authority of a State; and

[(B) cooperate with and use the services, records, and facilities of the State authorities.

[(2) In carrying out this subtitle as it applies to motor carriers and brokers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, the Commission may—

[(A) confer and hold joint hearings with State authorities;

[(B) cooperate with and use the services, records, and facilities of State authorities; and

[(C) make cooperative agreements with a State to enforce the economic laws and regulations of a State and the United States concerning highway transportation.

[(b) When an investigation under this subtitle involving a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I or IV of chapter 105 of this title, is about a rate, classification, rule, or practice of a State, the Commission shall notify the interested State of the proceeding before disposing of the issue.

[(c) When a representative of a State authority sits with the Commission in an investigation about a carrier subject to the jurisdiction of the Commission under subchapter I or III or chapter 105 of this title, the representative may be given an allowance for travel and subsistence expenses. The Commission may determine the amount of the allowance.

[§ 11503. Tax discrimination against rail transportation property

[(a) In this section—

[(1) "assessment" means valuation for a property tax levied by a taxing district;

[(2) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

[(3) "rail transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title; and

[(4) "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 clause (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; and

[(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchaper I of chapter 105 of this title.

[(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.

[§ 11503a. Tax discrimination against motor carrier transportation property

[(a) In this section—

[(1) "assessment" means valuation for a property tax levied by a taxing district;

[(2) "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" means property, as defined by the Interstate Commerce Commission, owned or used by a motor carrier providing transportation in interstate commerce whether or not such transportation is subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title; and

[(4) "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 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) 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 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) 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 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. 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 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

[(2) 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.

[§ 11504. Withholding State and local income tax by certain carriers

[(a) No part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title 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)(1) No part of the compensation paid by a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title 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) In this subsection "employee" has the meaning given such term in section 31132 of this title.

[(c)(1) 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) A water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title or a water carrier or class of water carriers providing transportation on inland or coastal waters under an exemption under this subtitle 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) 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.

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

[§ 11505. State action to enjoin rail carriers from certain actions

[(a) The attorney general of a State or transportation regulatory authority of a State or area affected by a violation of sections 10901–10907 of this title, may bring a civil action to enjoin a rail carrier from violating those sections.

[(b) A transportation regulatory authority of a State affected by an abandonment of service by a household goods freight forwarder in violation of section 10933 of this title may bring a civil action to enjoin the abandonment.

[§ 11506. 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 Interstate Commerce Commission to prove the lawfulness of transportation by motor carrier referred to in section 10521(a) (1) and (2) of this title.

[(b) GENERAL RULE.—The requirement of a State that a motor carrier, providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and providing transportation in that State, register the certificate or permit issued to the carrier under section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10521(a) (1) and (2) of this title when the registration is completed under standards of the Commission under subsection (c) of this section. When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden.

[(c) SINGLE STATE REGISTRATION SYSTEM.—

[(1) IN GENERAL.—Not later than 18 months after the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991, the Commission shall prescribe amendments to the standards existing as of such date of enactment. Such amendments shall implement a system under which—

[(A) a motor carrier is required to register annually with only one State;

[(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 CERTIFICATE; PROOF OF INSURANCE; PAYMENT OF FEES.—Under the amended standards 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 holding a certificate or permit issued under this subtitle—

[(i) to file and maintain evidence of such certificate or permit;

[(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.—Such amended standards—

[(i) shall require that the registration State issue a receipt, in a form prescribed under the amended 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) will be 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) will minimize the costs of complying with the registration system, and (III) will result 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 a certificate or permit 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 sub-section.

[(3) EFFECTIVE DATE OF AMENDMENTS.—Amendments prescribed under this subsection shall take effect by January 1, 1994.

[(d) INTERPRETATION AUTHORITY OF COMMISSION.—This section does not affect the authority of the Commission to interpret its regulations and certificates and permits issued under section 10922 or 10923 of this title.

[§ 11507. Prison-made property governed by State law

[Goods, wares, and merchandise produced or mined in a penal institution or by a prisoner not on parole, supervised release, or probation and transported into and used, sold, or stored in a State or territory or possession of the United States, is subject to the laws of that State, territory, or possession. This section does not apply to commodities produced in a penal institution of the United States Government for its use.

[CHAPTER 117—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

[Sec.
[11701. General authority.
[11702. Enforcement by the Interstate Commerce Commission.
[11703. Enforcement by the Attorney General.
[11704. Action by a private person to enjoin abandonment of service.
[11705. Rights and remedies of persons injured by certain carriers.
[11706. Limitation on actions by and against common carriers.
[11707. Liability of common carriers under receipts and bills of lading.
[11708. Private enforcement: motor carrier and household goods freight forwarder licensing.
[11709. Liability for issuance of securities by certain carriers.
[11710. Liability when property is delivered in violation of routing instructions.
[11711. Dispute settlement program for household goods carriers.
[11712. Tariff reconciliation rules for motor common carriers of property.

[§ 11701. General authority

[(a) The Interstate Commerce Commission may begin an investigation under this subtitle on its own initiative or on complaint. If the Commission finds that a carrier, broker or freight forwarder is violating this subtitle, the Commission shall take appropriate ac-

tion to compel compliance with this subtitle. If the Commission finds that a foreign motor carrier or foreign motor private carrier is violating section 10530 of this title, the Commission shall take appropriate action to compel compliance with such section. The Commission may take that action only after giving the carrier, broker or freight forwarder notice of the investigation and an opportunity for a proceeding.

[(b) A person, including a governmental authority, may file with the Commission, a complaint about a violation of this subtitle by a carrier providing, or broker for, transportation or service subject to the jurisdiction of the Commission under this subtitle or a foreign motor carrier or foreign motor private carrier providing transportation under a certificate of registration issued under section 10530 of this title, or freight forwarder. The complaint must state the facts that are the subject of the violation and, if it is against a water carrier, must be made under oath. The Commission may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Commission may not dismiss a complaint made against a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title because of the absence of direct damage to the complainant.

[(c) A formal investigative proceeding begun by the Commission under subsection (a) of this section is dismissed automatically unless it is concluded by the Commission with administrative finality by the end of the 3d year after the date on which it was begun.

[§ 11702. Enforcement by the Interstate Commerce Commission

[(a) The Interstate Commerce Commission may bring a civil action—

[(1) to enjoin a rail carrier from violating section 10901–10907 or 10933 of this title, or a regulation prescribed or certificate issued under any of those sections;

[(2) to enforce section 10527 or 10930 or 11109 or 11111 or 11323 of this title, or subchapter III of chapter 113 of this title and to compel compliance with the order of the Commission under any of those sections and that subchapter;

[(3) to enforce an order of the Commission, except a civil action to enforce an order for the payment of money, when it is violated by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title;

[(4) to enforce this subtitle (except a civil action under a provision of this subtitle governing the reasonableness and discriminatory character of rates), or a regulation or order of the Commission or a certificate or permit issued under this subtitle when violated by a motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or by a foreign motor carrier or foreign motor private carrier providing transportation under a certificate of registration issued under section 10530 of this title;

[(5) to enforce this subtitle (except a civil action under a provision of this subtitle governing the reasonableness and discriminatory character of rates), or a regulation or order of the Commission or a certificate or permit issued under this subtitle, except a civil action to enforce an order for the payment of money, when violated by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title; and

[(6) to enforce this subtitle, or a regulation or order of the Commission or permit issued under this subtitle when violated by a carrier providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title.

[(b) In a civil action under subsection (a)(4) of this section—

[(1) trial is in the judicial district in which the motor carrier, foreign motor carrier (as defined under section 10530(a)), foreign motor private carrier (as defined under section 10530(a)), 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.

[§ 11703. Enforcement by the Attorney General

[(a) The Attorney General may, and on request of the Interstate Commerce Commission shall, bring court proceedings to enforce this subtitle or a regulation or order of the Commission or certificate or permit issued under this subtitle and to prosecute a person violating this subtitle or a regulation or order of the Commission or certificate or permit issued under this subtitle.

[(b) The United States Government may bring a civil action on behalf of a person to compel a common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title to provide that transportation or service to that person in compliance with this subtitle 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.

[§ 11704. Action by a private person to enjoin abandonment of service

[An interested person may bring a civil action to enjoin an abandonment of service in violation of section 10933 of this title or a certificate issued under that section.

[§ 11705. Rights and remedies of persons injured by certain carriers

[(a) A person injured because a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title or a freight forwarder does not obey an order of the Commission, except an order for the payment of money, may bring a civil action to enforce that order under this subsection.

[(b)(1) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title or a freight forwarder is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff filed under subchapter IV of chapter 107 of this title or the applicable freight forwarder rate, as the case may be.

[(2) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this subtitle.

[(3) A common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II or IV of chapter 105 of this title or a freight forwarder is liable for damages resulting from the imposition of rates for transportation or service the Commission finds to be in violation of this subtitle.

[(c)(1) A person may file a complaint with the Commission under section 11701(b) of this title or bring a civil action under subsection (b) (1) or (2) of this section to enforce liability against a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title. A person may begin a proceeding under section 10704 or 10705 of this title to enforce liability under subsection (b)(3) of this section by filing a complaint with the Commission under section 11701(b) of this title.

[(2) When the Commission makes an award under subsection (b) of this section, the Commission shall order the carrier to pay the amount awarded by a specific date. The Commission may order a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Commission 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)(1) When a person begins a civil action under subsection (b) this section to enforce an order of the Commission requiring the payment of damages by a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title, the text of the order of the Commission 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 Commission 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 carrier is located, (C) if a rail carrier, through which the railroad line of that carrier runs, or (D) if a water carrier, in which a port of call on a route operated by that 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) 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.

[(3) 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.

[§ 11706. Limitation on actions by and against common carriers

[(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title or a freight forwarder must begin a civil action to recover charges for transportation or service provided by the carrier or freight forwarder within 3 years after the claim accrues; except that a motor carrier (other than a motor carrier providing transportation of household goods) or freight forwarder (other than a household goods freight forwarder)—

[(1) must begin such a civil action within 2 years after the claim accrues if the transportation or service is provided by the carrier in the 1-year period beginning on the date of the enactment of the Negotiated Rates Act of 1993; and

[(2) must begin such a civil action within 18 months after the claim accrues if the transportation or service is provided by the carrier after the last day of such 1-year period.

[(b) A person must begin a civil action to recover overcharges under section 11705(b)(1) of this title within 3 years after the claim accrues; except that a person must begin a civil action to recover overcharges from a motor carrier subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title for transportation or service—

[(1) within 2 years after the claim accrues if such transportation or service is provided in the 1-year period beginning on the date of the enactment of the Negotiated Rate Act of 1993; and

[(2) within 18 months after the claim accrues if such transportation or service is provided after the last day of such 1-year period.

If the claim is against a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title and an election to file a complaint with the Commission is made under section 11705(c)(1), the complaint must be filed within 3 years after the claim accrues.

[(c)(1) A person must file a complaint with the Commission to recover damages under section 11705(b)(2) of this title within 2 years after the claim accrues.

[(2) A person must begin a civil action to recover damages under section 11705(b)(3) of this title within 2 years after the claim accrues.

[(d) 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 subsection (b) of this section and the 2-year period under subsection (c)(1) of this section are extended for 90 days from the time the 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 Commission against a 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 carrier.

[§ 11707. Liability of common carriers under receipts and bills of lading

[(a)(1) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or IV of chapter 105 of this title and a freight forwarder shall issue a receipt or bill of lading for property it receives for transportation under this subtitle. That carrier or freight forwarder and any other common carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Commission under subchapter I, II, or IV 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 (1) the receiving carrier, (2) the delivering carrier, or (3) 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 filed under subchapter IV of chapter 107 of this title. Failure to issue a receipt or bill of lading does not affect the liability of a carrier or freight forwarder. 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) A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service and uses a motor

common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title to receive property from a consignor, the motor common 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 common 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) 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)(1) A common carrier and freight forwarder 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, rule, or tariff filed with the Commission in violation of this section is void.

[(2) 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.

[(3) A common carrier of passengers may limit its liability under its passenger rate for loss or injury of baggage carried on passenger trains, boats, or motor vehicles, or on trains, or boats, or motor vehicles carrying passengers.

[(4) A common carrier may limit its liability for loss or injury of property transported under section 10730 of this title.

[(d)(1) A civil action under this section may be brought against a delivering carrier (other than a rail 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 railroad or route.

[(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) A civil action under this section may be brought in a United States district court or in a State court.

[(C) 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 carrier or freight forwarder 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 or freight forwarder gives a person written notice that the carrier or freight forwarder 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 or freight forwarder, 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 or freight forwarder'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 or freight forwarder.

[§ 11708. Private enforcement: motor carrier and household goods freight forwarder licensing

[(a) If a person provides transportation by motor vehicle or service of a household goods freight forwarder in clear violation of section 10921–10924, 10927, 10930–10932, or 11323 of this title, 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) A copy of the complaint in a civil action under subsection (a) of this section shall be served on the Interstate Commerce Commission and a certificate of service must appear in the complaint filed with the court. The Commission may intervene in a civil action under subsection (a) of this section. The Commission may notify the district court in which the action is pending that it intends to consider the matter that is the subject of the complaint in a proceeding before the Commission. When that notice is filed, the court shall stay further action pending disposition of the proceeding before the Commission.

[(c) In a civil action under subsection (a) of this section, 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.

[§ 11709. Liability for issuance of securities by certain carriers

[A carrier issuing a security or assuming an obligation or liability that is void under section 11301 of this title and its directors, officers, attorneys, and other agents who participate in authorizing, issuing, hypothecating, or selling that security, or in authorizing

the assumption of that obligation or liability, are jointly and severally liable for the damages sustained by a person who acquires for value, in good faith, and without notice that the issue or assumption is void (1) that security, or (2) a security under which an assumption or liability is void. If a security void under that section is acquired directly from the carrier issuing it, the holder may rescind the transaction and recover the consideration given for the security when it is surrendered to that carrier.

[§ 11710. Liability when property is delivered in violation of routing instructions

[(a)(1) When a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title diverts or delivers property to another carrier in violation of routing instructions in the bill of lading, both of those carriers are jointly and severally liable to the 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 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 Commission.

[(3) A 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 carrier.

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

[§ 11711. Dispute settlement program for household goods carriers

[(a)(1) One or more motor common carriers providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title who want to establish a program to settle disputes between such carriers and shippers of household goods concerning the transportation of household goods may submit an application for establishing such program to the Commission. Such application shall be in such form and contain such information as the Commission may, by regulation, require. The Commission shall review and approve, in accordance with the provisions of this section, each application submitted under this subsection.

[(2) The Commission shall approve, at least within 45 days of its filing, any application to establish a program for settling disputes concerning the transportation of household goods which meets the requirements of subsection (b) of this section.

[(3) The Commission may investigate at any time the functioning of any program approved under this section and, after notice and an opportunity for a hearing, may suspend or revoke its approval for failure to meet the requirements of this section and such regulations as the Commission may issue to carry out the provisions of this section.

[(b) No program for settling disputes concerning the transportation of household goods may be approved under this section unless the program is a fair and expeditious method for settling such disputes and complies with each of the following requirements and such regulations as the Commission may issue:

[(1) The program is 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) The program provides for adequate notice of the availability of such program, including a concise easy-to-read, accurate summary of the program and disclosure of the legal effects of election to utilize the program. 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) Upon request of a shipper, the carrier must promptly provide such forms and other information as are necessary for initiating an action under the program to resolve a dispute.

[(4) Each person, authorized pursuant to the program 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 Commission may issue, to resolve such disputes fairly and expeditiously. The program 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) No fee for instituting a proceeding under the program may be charged the shipper; except that, if the program is binding solely on the carrier, the shipper may be charged a fee of not more than $25 for instituting a proceeding under the program. In any case in which a shipper is charged a fee under this paragraph for instituting a proceeding under the program and such dispute is settled in favor of the shipper, the person settling the dispute must refund such fee to the shipper unless the person settling the dispute determines that such refund is inappropriate.

[(6) The program must not require the shipper to agree to utilize the dispute settlement program prior to the time that a dispute arises.

[(7) The program 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) Any person settling a dispute concerning transportation of household goods under the program 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 dispute settler 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) Materials and information obtained in the course of a decision-making process to settle a dispute under a dispute settlement program approved under this section may not be used to bring an action under section 11910 of this title.

[(d) In any court action to resolve a dispute between a shipper of household goods and a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title 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) no dispute settlement program approved under this section was available for use by the shipper to resolve the dispute; or

[(B) a decision resolving the dispute was not rendered under a dispute settlement program approved under this section within the period provided under subsection (b)(8) of this section or an extension of such period under such subsection; or

[(C) the court proceeding is to enforce a decision rendered under a dispute settlement program approved under this section and is instituted after the period for performance under such decision has elapsed.

[(e) In any court action to resolve a dispute between a shipper of household goods and a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title 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 under a dispute settlement program approved under this section; or

[(2) after institution of a proceeding by the shipper to resolve such dispute under a dispute settlement program approved 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 under such program.

[(f) The provisions of this section shall apply only in the case of collect-on-delivery transportation of those types of household goods described in section 10102(11)(A) of this title.

[§ 11712. Tariff reconciliation rules for motor common carriers of property

[(a) MUTUAL CONSENT.—Subject to Commission review and approval, motor carriers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title (other than motor carriers providing transportation of household goods) and shippers may resolve, by mutual consent, overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications in compliance with sections 10761 and 10762 of this title. Resolution of such claims among the parties shall not subject any party to the penalties of chapter 119 of this title.

[(b) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall relieve the motor carrier of the duty to file and adhere to its rates, rules, and classifications as required in sections 10761 and 10762, except as provided in subsection (a) of this section.

[(c) RULEMAKING PROCEEDING.—Not later than 90 days after the date of the enactment of this section, the Commission shall institute a proceeding to establish rules pursuant to which the tariff requirements of sections 10761 and 10762 of this title shall not apply under circumstances described in subsection (a) of this section.

[CHAPTER 119—CIVIL AND CRIMINAL PENALTIES

[Sec.
[11901. General civil penalties.
[11902. Civil penalty for accepting rebates from common carrier.
[11902a. Penalties for violations of rules relating to loading and unloading motor vehicles.
[11903. Rate, discrimination, and tariff violations.
[11904. Additional rate and discrimination violations.
[11905. Transportation of passengers without charge.
[11906. Evasion of regulation of motor carriers and brokers.
[11907. Interference with railroad car supply.
[11908. Abandonment of service by household goods freight forwarder.
[11909. Record keeping and reporting violations.
[11910. Unlawful disclosure of information.
[11911. Issuance of securities; disposition of funds; restriction on ownership.
[11912. Consolidation, merger and acquisition of control: violation by a person not a carrier.
[11913. Disobedience to subpenas.
[11913a. Accounting principles violations.
[11914. General criminal penalty when specific penalty not provided.
[11915. Punishment of corporation for violations committed by certain individuals.
[11916. Conclusiveness of rates in certain prosecutions.
[11917. Weight-bumping in household goods transportation.

[§ 11901. General civil penalties

[(a) Except as otherwise provided in this section, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, an officer or agent of that carrier or a receiver, trustee, lessee, or agent of one of them, knowingly violating an order of the Commission under this subtitle is liable to the United States Government for a civil penalty of $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 common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or a receiver or trustee of that carrier, violating a regulation or order of the Commission under section 10761, 10762, 10764, 10765, or 11128 (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 carrier, receiver, or trustee violating subchapter V of chapter 107 of this title, or a regulation under that subchapter, is liable to the United States Government for a civil penalty of $500 for each violation. A separate violation occurs each day the violation continues.

[(d) A person knowingly authorizing, consenting to, or permitting a violation of sections 10901–10907 of this title or of a condition of a certificate 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.

[(e)(1) A carrier, receiver, or operating trustee violating an order or direction of the Commission under section 11123, 11124, 11125, 11127, or 11128(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.

[(2) A rail carrier, receiver, or operating trustee violating section 11126 of this title is liable to the United States Government for a civil penalty of $100 for each violation. A separate violation occurs for each car not counted when a car count is required under that section.

[(f)(1) A person required under subchapter III of chapter 111 of this title to make, prepare, preserve, or submit to the Commission a record concerning transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title 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 carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, and a lessor, receiver, or trustee of that 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 carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, a lessor, receiver, or trustee of that carrier, a person furnishing cars or protective services against heat or cold, and an officer, agent, or employee of one of them, required to make a report to the Commission 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 violation under this subsection continues.

[(g) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle or enter into or retain a written agreement under section 10702(c) of this title concerning transportation subject to the juris-

diction of the Commission under subchapter II of chapter 105 of this title or transportation provided under a certificate of registration issued under section 10530 of this title, 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 by the Commission, (4) does not comply with section 10921 of this title, (5) does not comply with section 10702(c) of this title, or (6) does not comply with section 10530 of this title, is liable to the United States Government 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; except that, in the case of a person who does not have authority under this subtitle to provide transportation of passengers, or an officer, agent, or employee of such person, that does not comply with section 10921 of this title with respect to providing transportation of passengers, the amount of the civil penalty shall not be more than $1,000 for each violation and $500 for each additional day the violation continues. After the date of enactment of this sentence, no penalties shall be imposed under this subsection for a violation relating to the transportation of household goods. Any such penalties that were imposed prior to such date of enactment shall be collected only in accordance with the provisions of subsection (i) of this section.

[(h) A person subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, and who is required to comply with section 10921 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, in any action brought by the Commission, be liable to the United States for a civil penalty not to exceed $20,000 for each violation.

[(i)(1) Any person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle concerning transportation of household goods subject to jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of such person, that (A) does not make the report, (B) does not specifically, completely, and truthfully answer the question, (C) does not make, prepare, or preserve the record in the form and manner prescribed by the Commission, or (D) does not comply with section 10921 of this title, is liable to the United States for a civil penalty of not more than $500 for each violation and of not more than $250 for each additional day during which the violation continues. No penalty shall be imposed under this paragraph for any failure to make, prepare, or preserve the record in the form and manner prescribed by the Commission unless the shipper or shippers have suffered harm as a result of such failure.

[(2) In determining and negotiating the amount of a civil penalty under this subsection, 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.

[(j)(1) Subject to the provisions of paragraph (3) of this subsection, if a common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or a receiver or trustee of such carrier fails or refuses to comply with any regulation issued by the Commission relating to protection of individual shippers, such carrier, receiver, or trustee is liable to the United States for a civil penalty of not more than $1,000 for each violation and of not more than $500 for each additional day during which the violation continues.

[(2)(A) If the Commission determines—

[(i) that a common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or a receiver or trustee of such carrier has failed or refused to comply with a regulation issued by the Commission relating to protection of individual shippers in excess of any performance standard established in such regulation; and

[(ii) with respect to each such failure or refusal, that the shipper or shippers have suffered harm as a result of such failure or refusal;

the Commission may, in writing, notify the carrier, receiver, or trustee of its determinations and may elect to assess civil penalties under this paragraph for such failures and refusals in lieu of proceeding under paragraph (1) of this subsection with respect to such failures and refusals. If the Commission elects to assess civil penalties under this paragraph, such civil penalties may only be assessed after notice and opportunity for a hearing.

[(B) Subject to the provisions of paragraph (3) of this subsection, the amount of a civil penalty which may be assessed under this paragraph for a failure or refusal shall not be more than $1,000 for such failure or refusal and $500 for each additional day during which such failure or refusal continues.

[(C) Notwithstanding the provisions of section 1336 of title 28, United States Code, a proceeding to enjoin or suspend, in whole or part, an order issued by the Commission assessing one or more civil penalties under this paragraph may only be brought in the United States court of appeals as provided by and in the manner prescribed in chapter 158 of such title.

[(3) The amount of a civil penalty which may be assessed under paragraph (1) or (2) of this subsection for a failure or refusal shall not be more than $500 for such failure or refusal and $250 for each additional day during which such failure or refusal continues if, between the time the carrier, receiver, or trustee receives notice from the Commission of such failure or refusal and the commencement of the assessment hearing or trial, as the case may be, the carrier, receiver, or trustee adequately compensates the shipper or shippers, or offers adequate compensation to the shipper or shippers, for the harm they have suffered as a result of such failure or refusal.

[(4)(A) No civil penalty may be imposed under this subsection for a failure or refusal to comply with a regulation issued by the Commission relating to protection of individual shippers unless the shipper or shippers have suffered harm as a result of such failure or refusal.

[(B) In addition, no civil penalty may be imposed under this subsection for a failure or refusal to comply with a regulation issued by the Commission relating to protection of individual shippers—

[(i) if, before receiving notice from the Commission of such failure or refusal, the carrier, receiver, or trustee adequately compensates the shipper or shippers, or offers adequate compensation to the shipper or shippers, for the harm they have suffered as a result of such failure or refusal; or

[(ii) in the case of a carrier, receiver, or trustee that does not know or have reason to know that the shipper or shippers have suffered harm as a result of such failure or refusal before receiving notice from the Commission of such failure or refusal, if such carrier, receiver, or trustee adequately compensates the shipper or shippers, or offers adequate compensation to the shipper or shippers, for such harm before commencement under this subsection of the assessment hearing or trial, as the case may be.

[(5) In determining and negotiating the amount of a civil penalty under this subsection, 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, and such other matters as fairness may require shall be taken into account.

[(k) 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 the jurisdiction of the Commission under subchapter II of chapter 105 of this title 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 more than $2,000 for each violation and of not more 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.

[(l) RATE DISCOUNTS.—A person, or an officer, employee, or agent of that person, that knowingly pays, accepts, or solicits a reduced rate or rates in violation of the regulations issued under section 10767 of this title is liable to the United States for a civil penalty of not less than $5,000 and not more than $10,000 plus 3 times the amount of damages which a party incurs because of such violation. Notwithstanding any other provision of this title, the express civil penalties and damages provided for in this subsection are the exclusive legal sanctions to be imposed under this title for practices found to be in violation of the regulations issued under section 10767 and such violations do not render tariff or contract provisions void or unenforceable.

[(m)(1) Trial in a civil action under subsections (a)–(f) of this section is in the judicial district in which the carrier has its principal

operating office or in a district through which the railroad of the carrier runs.

[(2) Trial in a civil action under subsection (g), (h), (i), (j)(1), (k), or (l) of this section is in the judicial district in which (A) the motor carrier or broker has its principal office, (B) the motor carrier or broker was authorized to provide transportation under this subtitle when the violation occurred, (C) the violation occurred, or (D) 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.

[§ 11902. Civil penalty for accepting rebates from common carrier

[A person (1) delivering property to a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title for transportation under this subtitle 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 filed with the Commission under subchapter IV of chapter 107 of this title, is liable to the United States Government 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.

[§ 11902a. Penalties for violations of rules relating to loading and unloading motor vehicles

[(a) Any person who knowingly authorizes, consents to, or permits a violation of subsection (a) or (b) of section 11109 of this title or who knowingly violates subsection (a) of such section is liable to the United States Government for a civil penalty or not more than $10,000 for each violation.

[(b) Any person who knowingly violates section 11109(b) of this title shall be fined not more than $10,000, imprisoned for not more than 2 years, or both.

[§ 11903. Rate, discrimination, and tariff violations

[(a) A person that knowingly offers, gives, solicits, accepts, or receives by any means transportation or service provided for property by a common carrier subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (1) at less than the rate in effect under chapter 107 of this title, or (2) by practicing discrimination, shall be fined at least $1,000 but not more than $20,000, imprisoned for not more than 2 years, or both.

[(b) A carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title or an

officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to the jurisdiction of the Commission under that chapter, that willfully does not file and publish its rates or tariffs as required under chapter 107 of this title or observe those tariffs until changed under law, shall be fined at least $1,000 but not more than $20,000, imprisoned for not more than 2 years or both.

[(c) 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 subsection (a) or (b) of this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

[(d) Trial as a criminal under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

[§ 11904. Additional rate and discrimination violations

[(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, and when that carrier is a corporation, an officer, employee, or agent of the corporation, that by any means knowingly and willfully assists a person in getting, or willingly permits a person to get, transportation provided under this subtitle for property at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

[(2) A person, or officer or agent of the person, that (A) delivers property for transportation under this subtitle to a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or for whom that carrier transports property as consignor or consignee, and (B) knowingly and willfully by any means gets or attempts to get that property transported at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

[(3) A person, or an officer or agent of a corporation or company that by payment of anything of value, solicitation, or in any other way, induces or attempts to induce a common carrrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or any of its officers or agents, to discriminate unreasonably against another consignor or consignee in the transportation of property shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

[(b) A person, or an officer, employee, or agent of that person, that (1) knowingly offers, grants, gives, solicits, accepts, or receives a rebate, concession, or discrimination in violation of a provision of this subtitle related to motor carrier transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or (2) by any means knowingly and willfully assists or permits another person to get transportation that is subject to the jurisdiction of the Commission under that subchapter at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined at least $200 but no more than $500 for the

first violation and at least $250 but not more than $2,000 for a subsequent violation.

[(c)(1) A water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, or an officer, agent, or employee of that carrier, that knowingly and willfully by any means offers, grants, or gives, or intentionally permits a person to get, transportation provided under that subchapter at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than $5,000.

[(2) A person that knowingly and willfully by any means solicits, accepts, or receives transportation provided under subchapter III of chapter 105 of this title at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than $5,000.

[(3) Trial in a criminal action under this subsection is in the judicial district in which any part of the violation is committed.

[(d)(1) A household goods freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, or an officer, agent, or employee of that household goods freight forwarder, that knowingly and willfully 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 chapter 107 of this title, shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

[(2) A person that knowingly and willfully by any means gets, or attempts to get, service provided under subchapter IV of chapter 105 of this title at less than the rate in effect for that service under chapter 107 of this title, shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

[§ 11905. Transportation of passengers without charge

[A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title that provides transportation of passengers without charge except as provided in section 10721(b), 10722 (c) and (d) (if the transportation is for its employees on sleeping and express cars or line maintainers of telegraph and telephone companies), 10723(a)(1) (other than paragraph (1)(A) of that subsection when transportation is arranged by a municipal government), or 10724(a) of this title, shall be fined at least $100 but not more than $2,000. An individual who uses a free ticket for, or accepts transportation subject to the jurisdiction of the Commission under those subchapters, except as provided in those sections, shall be fined at least $100 but not more than $2,000.

[§ 11906. Evasion of regulation of motor carriers and brokers

[A person, or an officer, employee, or agent of that person that by any means knowingly and willfully tries to evade regulation provided under this subtitle for motor carriers or brokers 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.

[§ 11907. 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 Interstate Commerce Commission under subchapter I of chapter 105 of this title 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 Commission under subchapter I of chapter 105 of this title 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.

[§ 11908. Abandonment of service by household goods freight forwarder

[A household goods freight forwarder controlled by or under common control with a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title, or a director, officer, receiver, operating trustee, lessee, agent, or employee of that household goods freight forwarder or common carrier, that knowingly authorizes or permits a violation of section 10933 of this title, shall be fined not more than $5,000.

[§ 11909. Record keeping and reporting violations

[(a) A person required to make a report to the Interstate Commerce Commission, or make, prepare, or preserve a record, under subchapter III of chapter 111 of this title about transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title 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 Commission, or (5) files a false report or record with the Commission, shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

[(b) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle or enter into or retain a written agreement under section 10702(c) of this title about transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or subject to the jurisdiction of the Commission before October 15, 1966, or an officer, agent, or employee of that person, that (1) willfully does not make that report or willfully does not enter into or

retain that agreement, (2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record with the Commission, (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 makes, prepares, or preserves a record in violation of a regulation or order of the Commission, shall be fined not more than $5,000.

[(c) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle about transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, 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 the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) willfully falsifies, destroys, mutilates, or changes that report, or record, (5) willfully makes a false or incomplete entry in the record about a fact or transaction required under this subtitle, (6) willfully makes, prepares, or preserves a record in violation of a regulation or order of the Commission, or (7) knowingly and willfully files a false report or record with the Commission, shall be fined not more than $5,000. Trial in a criminal action under this subsection is in the judicial district in which any part of the violation is committed.

[(d) A household goods freight forwarder, or an officer, agent, or employee of that household goods freight forwarder, required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle about transportation subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title 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 the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record with the Commission, (6) knowingly and willfully makes a false or incomplete entry in that record about a fact or transaction related to the business of that household goods freight forwarder, or (7) knowingly and willfully makes, prepares, or preserves a record in violation of a regulation or order of the Commission, shall be fined not more than $5,000.

[§ 11910. Unlawful disclosure of information

[(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, or an officer, agent, or employee of that carrier, or another person authorized to receive infor-

mation from that carrier, that knowingly discloses to another person, except the shipper or consignee, or a person who solicits or knowingly receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under this subtitle without the consent of the shipper or consignee, and (B) 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, shall be fined not more than $1,000.

[(2) A motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title 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 knowingly disclose to another person, except the shipper or consignee, and another person may not solicit, or knowingly 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 subtitle 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.

[(3) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, or an officer, receiver, trustee, lessee, agent, or employee of that carrier, or another person authorized by that carrier or person to receive information from that carrier, that knowingly and willfully discloses to another person, except the shipper or consignee, or a person that solicits or knowingly and willfully receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under that subchapter without the consent of the shipper or consignee, and (B) 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, shall be fined not more than $2,000. Trial in a criminal action under this paragraph is in the judicial district in which any part of the violation is committed.

[(4) A household goods freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, or an officer, agent, or employee of that household goods freight forwarder, or another person authorized by that household goods freight forwarder, or person to receive information, who knowingly and willfully discloses to another person, except the shipper or consignee, or a person that solicits or knowingly and willfully receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that forwarder for service provided under that subchapter without the consent of the shipper or consignee, and (B) 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, shall be fined not more

than $100 for the first violation and not more than $500 for a subsequent violation. A separate violation occurs each day the violation continues.

[(b) This subtitle does not prevent a carrier or broker providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title 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) An employee of the Commission 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 Commission, a court, or a judge of that court, shall be fined not more than $500, imprisoned for not more than 6 months, or both.

[(d) A person that knowingly discloses confidential data made available to such person under section 11165 of this title by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall be fined not more than $50,000.

[§ 11911. Issuance of securities; disposition of funds; restriction on ownership

[(a) A director, officer, attorney, or agent of a carrier defined in section 11301(a)(1) of this title that knowingly agrees to or concurs in (1) an issue of securities or assumption of obligations or liability in violation of section 11301 of this title, (2) a disposition of securities in violation of an order of the Interstate Commerce Commission, or (3) an application not authorized by the Commission of the funds derived by the carrier through a disposition of securities shall be fined at least $1,000 but not more than $10,000, imprisoned for at least one year but not more than 3 years, or both.

[(b) A person that violates section 11322 of this title shall be fined at least $1,000 but not more than $10,000, imprisoned for at least one year but not more than 3 years, or both.

[§ 11912. Consolidation, merger, and acquisition of control: violation by a person not a carrier

[A person, other than a common carrier, that violates section 11343, 11344, 11345, 11346, 11347, or 11351 of this title shall be fined not more than $5,000.

[§ 11913. Disobedience to subpenas

[A person not obeying a subpena or requirement of the Interstate Commerce Commission 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.

[§ 11913a. Accounting principles violations

[Any rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title that fails to obtain final certification of its cost accounting system under section 11164(b) of this title shall be fined not less than $50,000.

[§ 11914. General criminal penalty when specific penalty not provided

[(a) When another criminal penalty is not provided under this chapter, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, 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 subtitle or an order prescribed under this subtitle, shall be fined not more than $5,000. However, if the violation is for discrimination in rates charged for transportation, the person may be imprisoned for not more than 2 years in addition to being fined under this subsection. A separate violation occurs each day a violation of section 11321(a) or 11342 of this title continues.

[(b) When another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates a provision of this subtitle or a regulation or order prescribed under this subtitle, or a condition of a certificate or permit issued under this subtitle related to transportation that is subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or subject to the jurisdiction of the Commission before October 15, 1966, or a condition of a certificate of registration issued under section 10530 of this title, shall be fined at least $100 but not more than $500 for the first violation and at least $200 but not more than $500 for a subsequent violation. A separate violation occurs each day the violation continues.

[(c) When another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates a provision of this subtitle or a regulation or order prescribed under this subtitle, or a condition of a certificate or permit issued under this subtitle related to transportation that is subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, shall be fined not more than $500. A separate violation occurs each day the violation continues. Trial in a criminal action under this subsection is in the judicial district in which any part of the violation is committed.

[(d) When another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates a provision of this subtitle or a regulation or order prescribed under this subtitle or a condition of a permit issued under this subtitle related to service that is subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, shall be fined not more than $100 for the first violation and not more than $500 for a subsequent violation. A separate violation occurs each day the violation continues.

[§ 11915. 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 common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title that is a corporation is also a violation of this subtitle 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.

[§ 11916. Conclusiveness of rates in certain prosecutions

[When a carrier files with the Interstate Commerce Commission or publishes a particular rate under chapter 107 of this title or participates in one of those rates, the published or filed rate is conclusive proof against that carrier, its officer, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 11902 or 11903 of this title. A departure, or offer to depart, from that rate is a violation of those sections.

[§ 11917. Weight-bumping in household goods transportation

[(a) 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 the jurisdiction of the Commission under subchapter II of chapter 105 of this title.

[(b) Any individual who has been found to have committed weight-bumping shall, for each offense, be fined at least $1,000 but not more than $10,000, imprisoned for not more than 2 years, or both.]

SUBTITLE IV—INTERSTATE TRANSPORTATION

PART A—RAIL

Chapter		*Sec.*
101.	*GENERAL PROVISIONS*	*10101*
103.	*JURISDICTION*	*10301*
105.	*RATES*	*10501*
107.	*LICENSING*	*10701*
109.	*OPERATIONS*	*10901*
111.	*FINANCE*	*11101*
113.	*FEDERAL-STATE RELATIONS*	*11301*
115.	*ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES*	*11501*
117.	*CIVIL AND CRIMINAL PENALTIES*	*11701*

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 A—RAIL

CHAPTER 101—GENERAL PROVISIONS

Sec.
10101. Rail transportation policy.
10102. Definitions.
10103. Remedies are exclusive.

§ 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 Panel;

(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 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; and

(14) to encourage and promote energy conservation.

§ 10102. Definitions

In this part—

(1) "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;

(2) "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;

(3) "Panel" means the Transportation Adjudication Panel;

(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 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, fare, 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, 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.

§10103. Remedies are exclusive

Except as otherwise provided in this part, the remedies provided under this part are exclusive and preempt the remedies provided under Federal or State law.

CHAPTER 103—JURISDICTION

Sec.

10301. General jurisdiction.
10302. Authority to exempt rail carrier transportation.

§ 10301. General jurisdiction

(a)(1) Subject to this chapter and other law, the Panel 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;

(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 Panel 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.

(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 Panel 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 Panel has jurisdiction under sections 10902 and 10903 of this title over mass transportation provided by a local governmental authority.

§ 10302. Authority to exempt rail carrier transportation

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Panel under this part, the Panel, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Panel finds that the application 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 of the provision is not needed to protect shippers from the abuse of market power.

(b) The Panel 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 Panel shall, within 90 days after receipt of any such application, determine whether to begin an appropriate proceeding. If the Panel decides not to begin a 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 one year after it is begun.

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

(d) The Panel may revoke an exemption, to the extent it specifies, when it finds that application 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 Panel shall, within 90 days after receipt of a request for revocation under this subsection, determine whether to begin an appropriate proceeding. If the Panel decides not to begin a proceeding, 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 one year 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 11506 of this title. Nothing in this subsection or section 11506 of this title shall prevent rail carriers from offering alternative terms nor give the Panel the authority to require any specific level of rates or services based upon the provisions of section 11506 of this title.

(f) The Panel may exercise its authority under this section to exempt transportation that is provided by a rail carrier.

(g) The Panel 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 105—RATES

SUBCHAPTER I—GENERAL AUTHORITY

Sec.

10501. Standards for rates, classifications, through routes, rules, and practices.
10502. Authority for rail carriers to establish rates, classifications, rules, and practices.
10503. Authority for rail carriers to establish through routes.

10504. Authority and criteria: rates, classifications, rules, and practices prescribed by Panel.
10505. Authority: through routes, joint classifications, rates, and divisions prescribed by Panel.
10506. Rate agreements: exemption from antitrust laws.
10507. Determination of market dominance in rail rate proceedings.
10508. Inflation-based rate increases.
10509. Contracts.

SUBCHAPTER II—SPECIAL CIRCUMSTANCES

10521. Government traffic.
10522. Emergency rates.
10523. Car utilization.

SUBCHAPTER III—LIMITATIONS

10541. Prohibitions against discrimination by rail carriers.
10542. Facilities for interchange of traffic.
10543. Continuous carriage of freight.
10544. Transportation services or facilities furnished by shipper.
10545. Demurrage charges.
10546. Designation of certain routes by shippers.

SUBCHAPTER I—GENERAL AUTHORITY

§ 10501. 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 Panel 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 Panel 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 transporation subject to the jurisdiction of the Panel under this part may establish any rate for transportation or other service provided by the rail carrier.

(d)(1) If the Panel determines, under section 10507 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 Panel shall recognize the policy of this part that rail carriers shall earn adequate revenues, as established by the Panel under section 10504(a)(2) of this title.

(3) The Panel shall, within one year after the date of the enactment of this paragraph, complete the pending Interstate Commerce Commission non-coal rate guidelines proceeding to establish simplified and expedited procedures for the determination of rate reasonableness cases in which a presentation of constrained market pricing evidence is impractical.

§ 10502. Authority for rail carriers to establish rates, classifications, rules, and practices

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

(1) rates, including 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.

§ 10503. Authority for rail carriers to establish through routes

Rail carriers providing transportation subject to the jurisdiction of the Panel under this part shall establish through routes with each other, 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.

§ 10504. Authority and criteria: rates, classifications, rules, and practices prescribed by Panel

(a)(1) When the Panel, after a full hearing, decides that a rate charged or collected by a rail carrier for transportation subject to the jurisdiction of the Panel under this part, or that a classification, rule, or practice of that carrier does or will violate this part, the Panel may prescribe the maximum rate, classification, rule, or practice to be followed. The Panel 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 Panel.

(2) The Panel 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 Panel 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 Panel shall annually determine which rail carriers are earning adequate revenues.

(b) The Panel may begin a proceeding under this section on its own initiative or on complaint. A complaint under subsection (a) of

this section must be made under section 11501 of this title, but the proceeding may also be in extension of a complaint pending before the Panel.

§ 10505. Authority: through routes, joint classifications, rates, and divisions prescribed by Panel

(a)(1) The Panel 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 Panel under this part.

(2) The Panel 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 sections 10541, 10542, or 11101 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 Panel decides that the proposed through route is needed to provide adequate, and more efficient or economic, transportation.

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

(b) The Panel 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 10503 of this title, or under a decision of the Panel under subsection (a) of this section, does or will violate section 10501 of this title.

(c) If a division of a joint rate prescribed under a decision of the Panel is later found to violate section 10501 of this title, the Panel 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 Panel decides is justified. The Panel may make a decision under this subsection effective as part of its original decision.

§ 10506. 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 Panel shall by regulation prescribe.

(2)(A) A rail carrier providing transportation subject to the jurisdiction of the Panel 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 Panel for approval of that agreement under this subsection. The Panel 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 Panel approves the agreement, it may be made and carried out under its terms and under the conditions required by the Panel, 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 Panel 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 Panel may approve an agreement under subparagraph (A) of this paragraph only when the rail carriers applying for approval file a verified statement with the Panel. 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 Panel 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 par-

ticipate in agreements related to, or to vote on rates except with a carrier which forms part of a particular single route. If the Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel under this part, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Panel for approval of that agreement under this paragraph. The Panel 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 Panel approves the agreement, it may be made and carried out under its terms and under the terms required by the Panel, 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 Panel 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 Panel 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 Panel. The Panel 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 Panel.

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

(c) The Panel 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 Panel 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 Panel may begin a proceeding under this section on its own initiative or on application. Action of the Panel 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) The Panel shall review each agreement approved under subsection (a) of this section periodically, but at least once every 3 years—

(1) to determine whether the agreement or an organization established or continued under one of those agreements still complies with the requirements of that subsection and the public interest; and

(2) to evaluate the success and effect of that agreement or organization on the consuming public and the national rail freight transportation system.

If the Panel finds that an agreement or organization does not conform to the requirements of that subsection, it shall end or suspend its approval.

(f)(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 Panel 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 Panel under this subsection shall be published and made available to the public under section 552(a) of title 5.

§ 10507. 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 Panel under this part is challenged as being unreasonably high, the Panel shall determine, within 90 days after the start of a proceeding, whether the rail carrier proposing the rate has market dominance over the transportation to which the rate applies. The Panel may make that determination on its own initiative or on complaint. A finding by the Panel 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 Panel or set aside by a court of competent jurisdiction.

(c) When the Panel 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 Panel 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 Class I rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Panel's Rail Form A cost finding methodology (or an alternative methodology adopted by the Panel 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 Panel. 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 Panel shall prescribe.

(2) A finding by the Panel 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.

§ 10508. Inflation-based rate increases

(a) The Panel may, on a quarterly basis and consistent with the rail transportation policy set forth in section 10101 of this title, prescribe a percentage rate index for rail carriers in order to compensate for inflationary cost increases. Such percentage rate index may be applicable on an industry-wide, territory-wide, or carrier-by-carrier basis.

(b) For purposes of this section, a percentage rate index may permit rate increases within a specified range to allow carriers to recover a total revenue increase specified by the Panel as necessary to compensate for inflationary cost increases.

(c) The Panel 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 Panel, with appropriate adjustments to reflect the changing 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.

§ 10509. Contracts

(a) One or more rail carriers providing transportation subject to the jurisdiction of the Panel 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 Panel 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.

(d) 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.

SUBCHAPTER II—SPECIAL CIRCUMSTANCES

§ 10521. Government traffic

A rail 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 rail carrier lawfully operating in the area where the transportation would be provided.

§ 10522. Emergency rates

(a) The Panel may authorize a rail carrier providing transportation or service subject to its jurisdiction under this part to give reduced rates for service and transportation of property to or from an area in the United States to provide relief during emergencies. When the Panel takes action under this subsection, it must—

(1) define the area of the United States in which the reduced rates will apply;

(2) specify the period during which the reduced rates are to be in effect; and

(3) define the class of persons entitled to the reduced rates.

(b) The Panel may specify those persons entitled to reduced rates by reference to those persons designated as being in need of relief by the United States Government or by a State government authorized to assist in providing relief during the emergency. The Panel may act under this section without regard to subchapter II of chapter 5 of title 5.

§ 10523. 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 Panel shall facilitate development of such charges so as to increase the utilization of equipment.

SUBCHAPTER III—LIMITATIONS

§ 10541. Prohibitions against discrimination by rail carriers

(a)(1) A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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 10509 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.

§ 10542. Facilities for interchange of traffic

A rail carrier providing transportation subject to the jurisdiction of the Panel 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.

§ 10543. Continuous carriage of freight

A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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.

§ 10544. Transportation services or facilities furnished by shipper

A rail carrier providing transportation or service subject to the jurisdiction of the Panel under this part may publish 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 Panel 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 Panel may begin a proceeding under this section on its own initiative or on application.

§ 10545. Demurrage charges

A rail carrier providing transportation subject to the jurisdiction of the Panel 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.

§ 10546. 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 Panel 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 Panel may prescribe exceptions to the authority of a person to direct the movement of traffic under subsection (a) of this section.

CHAPTER 107—LICENSING

Sec.

10701. Authorizing construction and operation of railroad lines.
10702. Finance and construction transactions by Class II and Class III rail carriers and noncarriers.
10703. Filing and procedure for notice of intent to abandon or discontinue.
10704. Offers to purchase to avoid abandonment and discontinuance.
10705. Offering abandoned rail properties for sale for public purposes.
10706. Exception.

§ 10701. Authorizing construction and operation of railroad lines

(a) A rail carrier providing transportation subject to the jurisdiction of the Panel under this part may—

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

(2) construct an additional railroad line;

(3) acquire or operate an extended or additional railroad line; or

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

only if the Panel 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 Panel shall give reasonable public notice of the beginning of such proceeding.

(c) The Panel shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Panel 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 the Panel finds necessary in the public interest.

(d)(1) When a certificate has been issued by the Panel under this section or section 10702 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 Panel for determination. The Panel shall make a determination under this paragraph within 90 days after the dispute is submitted for determination.

(e) The Panel may require any rail carrier proposing both to construct and operate a new railroad line pursuant to this section to provide a fair and equitable arrangement for the protection of the interests of railroad employees who may be affected thereby no less protective of and beneficial to the interests of such employees than those established pursuant to section 11126 of this title.

(f) Subsections (a), (b), (c), and (e) of this section shall only apply to Class I rail carriers.

§ 10702. Finance and construction transactions by Class II and Class III rail carriers and noncarriers

(a)(1) A Class II or Class III (as defined by the Panel) rail carrier providing transportation subject to the jurisdiction of the Panel under this part, or a noncarrier, may—

(A) construct an extension of any of its railroad lines;

(B) construct an additional railroad line; or

(C) acquire or operate a railroad line,

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

(2) A certificate issued by the Panel under subsection (c) shall also be required for—

(A) a Class II or Class III rail carrier providing transportation subject to the jurisdiction of the Panel under this part, or a noncarrier to provide transportation over, or by means of,

a railroad line by trackage rights, lease, or joint ownership or joint use of the railroad line (and terminals incidental thereto);

(B) a consolidation or merger of the properties or franchises of at least 2 Class II or Class III rail carriers into one corporation for the ownership, management, and operation of the previously separately owned properties;

(C) the acquisition of control of a Class II or Class III rail carrier by one or more Class II or Class III rail carriers;

(D) the acquisition of control of at least 2 Class II or Class III rail carriers by a person that is not a rail carrier; and

(E) the acquisition of control of a Class II or Class III rail carrier by a person that is not a rail carrier but that controls at least one Class II or Class III rail carrier.

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

(c) The Panel shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Panel finds that such activities are inconsistent with the public convenience and necessity because—

(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.

Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions the Panel finds necessary in the public interest.

(d) When a person is involved in a transaction for which approval is sought under this section, the Panel shall require such person to protect the interest of affected employees to an extent equal to the protection required under sections 2 through 5 of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101–2104).

(e) The authority of the Panel over transactions described in subsection (a)(2) is exclusive. A rail carrier or corporation participating in or resulting from such a transaction 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 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.

§ 10703. Filing and procedure for notice of intent to abandon or discontinue

(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Panel 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 a notice of intent relating thereto with the Panel. 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 Panel under this part files a notice of intent, the notice 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 Panel on the future of the rail line; and

(C)(i) a statement that the line is available for sale in accordance with section 10704 of this title, (ii) a statement that the rail carrier will promptly provide to each interested party an estimate of the minimum purchase price, calculated in accordance with section 10704 of this title and (iii) the name and business address of the person who is authorized to discuss sale terms for the rail carrier.

(3) The rail carrier shall—

(A) send by certified mail a copy of the notice of intent 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 Panel) of the railroad line during the 12 months preceding the filing of the notice of intent; and

(E) attach to the notice filed with the Panel 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 notice of intent is filed.

(b)(1) Except as provided in paragraph (2) or subsection (d), abandonment and discontinuance may occur as provided in section 10704.

(2) If, after considering the scope of an abandonment or discontinuance proposed in a notice of intent filed under this section, the Panel considers it necessary, to improve the viability of the lines included within the proposed abandonment or discontinuance for possible sale or transfer and continued operation, and to enhance competitive alternatives in the event of such sale or transfer, the Panel may require the filing of a new notice of intent which enlarges the scope of the proposed abandonment or discontinuance or provides for appropriate trackage rights.

(3) The Panel 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 11126 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 Panel. 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 Panel 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 a notice of intent to abandon or discontinue under subsection (a) of this section.

(d) The Panel may disapprove a proposed abandonment or discontinuance if the Panel finds it inconsistent with the public convenience and necessity.

§ 10704. Offers to purchase to avoid abandonment and discontinuance

(a) Any rail carrier which has filed a notice of intent to abandon or discontinue shall provide promptly to a party considering an offer to purchase and shall provide concurrently to the Panel—

(1) a statement of the minimum purchase price required;

(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 commercial potential of the railroad line; and

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

(b) Within 6 months after a notice of intent is filed under section 10703, any person may offer to purchase the railroad line that is the subject of such notice of intent. Such offer shall be filed concurrently with the Panel. If the offer to purchase is less than the minimum purchase price stated pursuant to subsection (a)(1), the offer shall explain the basis of the disparity, and the manner in which the offer is calculated.

(c)(1) Unless the Panel, within 15 days after the expiration of the 6-month period described in subsection (b), finds that one or more financially responsible persons (including a governmental authority) have offered to purchase 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 10703.

(2) If the Panel finds that such an offer or offers to purchase have 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 sale of the line; or

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

(d) Except as provided in subsection (e)(3), if the rail carrier and a financially responsible person (including a governmental authority) fail to agree on the amount or terms of the purchase, either party may, within 30 days after the offer is made, request that the Panel establish the conditions and amount of compensation.

(e)(1) Whenever the Panel is requested to establish the conditions and amount of compensation under this section—

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

(B) the Panel shall determine the price and other terms of sale, except that in no case shall the Panel 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).

(2) The decision of the Panel shall be binding on both parties, except that the person who has offered to purchase the line may withdraw his offer within 10 days of the Panel'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 purchase, it shall select the offeror with whom it wishes to transact business, and complete the sale agreement, or request that the Panel establish the conditions and amount of compensation before the 40th day after the expiration of the 6-month period described in subsection (b). If no agreement on sale is reached within such 40-day period and the Panel has not been requested to establish the conditions and amount of compensation, any other offeror whose offer was made within the 6-month period described in subsection (b) may request that the Panel establish the conditions and amount of compensation. If the Panel has established the conditions and amount of compensation, and the original offer has been withdrawn, any other offeror whose offer was made within the 6-month period described in subsection (b) may accept the Panel's decision within 20 days after such decision, and the Panel shall require the carrier to enter into a sale agreement with such offeror, if such sale agreement incorporates the Panel's decision.

(4) 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.

(f) Upon abandonment of a railroad line under this section, the obligation of the rail carrier abandoning the line to provide transportation on that line, as required by section 10901(a), is extinguished.

§ 10705. Offering abandoned rail properties for sale for public purposes

When a rail carrier files a notice of intent to abandon or discontinue under section 10703, the Panel 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 Panel 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 Panel. 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.

§ 10706. Exception

Notwithstanding section 10701 and subchapter II of chapter 111 of this title, and without the approval of the Panel, a rail carrier providing transportation subject to the jurisdiction of the Panel under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

CHAPTER 109—OPERATIONS

SUBCHAPTER I—GENERAL REQUIREMENTS

Sec.
10901. Providing transportation, service, and rates.
10902. Use of terminal facilities.
10903. Switch connections and tracks.

SUBCHAPTER II—CAR SERVICE

10921. Criteria.
10922. Compensation and practice.
10923. Rerouting traffic on failure of rail carrier to serve the public.
10924. War emergencies; embargoes imposed by carriers.

SUBCHAPTER III—REPORTS AND RECORDS

10941. Definitions.
10942. Uniform accounting system.
10943. Depreciation charges.
10944. Records: form; inspection; preservation.
10945. Reports by rail carriers, lessors, and associations.

SUBCHAPTER IV—RAILROAD COST ACCOUNTING

10961. Implementation of cost accounting principles.
10962. Rail carrier cost accounting system.
10963. Cost availability.
10964. Accounting and cost reporting.

SUBCHAPTER I—GENERAL REQUIREMENTS

§ 10901. Providing transportation, service, and rates

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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 10509 of this title before responding to reasonable requests for service.

(b) A rail carrier shall also provide to any person, on request, rates and other service terms. The response by a rail carrier to a request for 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 written notice is provided in accordance with subsection (d) to—

(1) any person who has requested such rates or terms under subsection (b); and

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

(d) The Panel shall, by regulation, establish rules to implement this section, including appropriate periods of notice.

§ 10902. Use of terminal facilities

(a) The Panel 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 Panel under this part, to be used by another rail carrier if the Panel 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 Panel 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 Panel 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 Panel may establish such conditions and compensation.

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

§ 10903. 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 Panel 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 Panel under section 11501 of this title. The Panel shall investigate the complaint and decide the safety, practicability, justification, and compensation to be paid for the connection. The Panel may direct the rail carrier to comply with subsection (a) of this section only after a full hearing.

SUBCHAPTER II—CAR SERVICE

§ 10921. Criteria

(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Panel under this part shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Panel may require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate car service if the Panel decides that the rail carrier has materially failed to furnish that service. The Panel may begin a proceeding under this paragraph when an interested person files an application with it. The Panel 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 Panel may require a rail carrier to file its car service rules with the Panel.

(b) The Panel may designate and appoint agents and agencies to make and carry out its directions related to car service and matters under sections 10923 and 10924(a)(1) of this title.

§ 10922. Compensation and practice

(a) The regulations of the Panel 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 ve-

hicle, 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 Panel 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.

§ 10923. Rerouting traffic on failure of rail carrier to serve the public

(a) When the Panel considers that a rail carrier providing transportation subject to the jurisdiction of the Panel under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Panel may direct the handling, routing, and movement of the traffic of that rail carrier and its distribution over other railroad lines to promote commerce and service to the public. Subject to subsection (b)(2) of this section, the rail carriers may establish the terms of compensation between themselves.

(b)(1) Except as provided in paragraph (2) of this subsection, the Panel may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5.

(2) When the rail carriers do not agree on the terms of compensation under this section, the Panel may establish the terms for them in a later proceeding.

(c) When there is a shortage of equipment, congestion of traffic, or other emergency declared by the Panel, it may prescribe temporary through routes that are desirable in the public interest on its own initiative or on application without regard to subchapter II of chapter 7 of this title, and subchapter II of chapter 5 of title 5.

§ 10924. War emergencies; embargoes imposed by carriers

(a)(1) When the President, during time of war or threatened war, notifies the Panel 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 Panel 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 Panel 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

§ 10941. 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 Panel 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 Panel under this part that performs a service, or engages in activities, related to transportation under this part.

§ 10942. Uniform accounting system

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

§ 10943. Depreciation charges

The Panel 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 Panel 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 Panel;

(2) charge another rate of depreciation; or

(3) include other depreciation charges in operating expenses.

§ 10944. Records: form; inspection; preservation

(a) The Panel 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 Panel under this part to the extent related to those cars or that service.

(b) The Panel, or an employee designated by the Panel, 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; and

(B) a person controlling, controlled by, or under common control with a rail carrier if the Panel considers inspection relevant to that person's relation to, or transaction with, that rail carrier.

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

§ 10945. Reports by rail carriers, lessors, and associations

(a) The Panel may require rail carriers, lessors, and associations, or classes of them as the Panel may prescribe, to file annual, periodic, and special reports with the Panel containing answers to questions asked by it.

(b)(1) An annual report shall contain an account, in as much detail as the Panel 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 Panel by the end of the third month after the end of the year for which the report is made unless the Panel extends the filing date or changes the period covered by the report. The annual report and, if the Panel requires, any other report made under this section, shall be made under oath.

SUBCHAPTER IV—RAILROAD COST ACCOUNTING

§ 10961. Implementation of cost accounting principles

Not less than once every five years after the promulgation of original rules implementing the cost accounting principles established by the Railroad Accounting Principles Board, the Panel shall review such principles and shall, by rule, make such changes in such principles as are required to achieve the regulatory purposes of this part. The Panel 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 Panel shall conform such rules to generally accepted accounting principles.

§ 10962. 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 Panel under section 10961 of this title. A rail carrier may, after notifying the Panel, make modifications in such system unless, within 60 days after the date of notification, the Panel finds such modifications to be inconsistent with the rules promulgated by the Panel under section 10961 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 Panel, the Panel 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.

§ 10963. Cost availability

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

§ 10964. Accounting and cost reporting

(a) To obtain expense and revenue information for regulatory purposes, the Panel may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Panel 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. To the extent such rules are required solely to provide expense and revenue information necessary for determining railroad costs in regulatory proceedings under this part, such rules shall be promulgated in accordance with the cost accounting principles established by the Railroad Accounting Principles Board.

(b) Any reports required by the rules established by the Panel under this section shall include only information considered necessary for disclosure under the cost accounting principles established by the Board or under generally accepted accounting principles or the requirements of the Securities and Exchange Commission.

CHAPTER 111—FINANCE

SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

Sec.
11101. Equipment trusts: recordation; evidence of indebtedness.

SUBCHAPTER II—COMBINATIONS

11121. Scope of authority.
11122. Limitation on pooling and division of transportation or earnings.
11123. Consolidation, merger, and acquisition of control.
11124. Consolidation, merger, and acquisition of control: conditions of approval.
11125. Consolidation, merger, and acquisition of control: procedure.
11126. Employee protective arrangements in transactions involving rail carriers.
11127. Supplemental orders.

SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

§ 11101. Equipment trusts: recordation; evidence of indebtedness

(a) 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 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 Panel. An assignment of a right or interest under one of those instruments and an amendment to that in-

strument or assignment including a release, discharge, or satisfaction of any part of it shall also be filed with the Panel. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Panel 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.

(b) The Panel 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 Panel 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 Panel shall to the greatest extent practicable perform its functions under this section through contracts with private sector entities.

(d) The Panel shall assess user fees for services performed by the Panel or a contractor thereof under this section. Such fees may be used by the Panel to offset its costs, to the extent provided in advance in appropriations Acts.

(e) 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 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.

(f) 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.

SUBCHAPTER II—COMBINATIONS

§ 11121. Scope of authority

(a) The authority of the Panel under this subchapter is exclusive. A rail carrier or corporation participating in or resulting from a transaction approved by or exempted by the Panel 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 trans-

action 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.

(b) The requirement to obtain the approval or authorization of the Panel under this subchapter shall only apply to transactions involving at least one Class I rail carrier, and shall not apply to transactions described in section 10702.

§ 11122. Limitation on pooling and division of transportation or earnings

(a) A rail carrier providing transportation subject to the jurisdiction of the Panel 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 Panel under this section or section 10923 of this title. The Panel may approve and authorize the agreement or combination if the rail carriers involved assent to the pooling or division and the Panel 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 Panel may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the rail carriers.

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

§ 11123. Consolidation, merger, and acquisition of control

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

(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 authoriza-

tion of the Panel 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.

§ 11124. Consolidation, merger, and acquisition of control: conditions of approval

(a) The Panel may begin a proceeding to approve and authorize a transaction referred to in section 11123 of this title on application of the person seeking that authority. When an application is filed with the Panel, the Panel 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 Panel shall hold a public hearing unless the Panel 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 Panel, the Panel 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 Panel shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Panel may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights. Any trackage rights conditions imposed to alleviate anticompetitive effects of the transaction shall provide for 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 in-

crease of total fixed charges, the Panel may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. The Panel may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Panel 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 Panel, the Panel 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 Panel 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 Secretary of Transportation.

(e)(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 Panel 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 Panel 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 Panel 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 Panel, in their discretion, to note in the docket or otherwise publicly the occurrence and substance of an ex parte communication.

§ 11125. Consolidation, merger, and acquisition of control: procedure

(a) The Panel shall publish notice of the application under section 11124 in the Federal Register by the end of the 30th day after the application is filed with the Panel. However, if the application is incomplete, the Panel shall reject it by the end of that period. The

order of rejection is a final action of the Panel. 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 Panel, 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 Panel, the following conditions apply:

(1) Written comments about an application may be filed with the Panel 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, 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 Panel by the end of the 15th day after the date of receipt of the written comments.

(2) The Panel 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 Panel must conclude evidentiary proceedings by the end of the 6th month after the date of publication of notice under subsection (a) of this section. The Panel 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 Panel, which the Panel 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, may be filed with the Panel within 30 days after notice of the application is published under subsection (a) of this section.

(2) The Panel 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 Panel must conclude any evidentiary proceedings by the 125th day after the date of publication of notice under subsection (a) of this section. The Panel must issue a final decision by the 40th 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, may be filed with the Panel within 30 days after notice of the application is published under subsection (a) of this section.

(2) The Panel must conclude any evidentiary proceedings by the 105th day after the date of publication of notice under subsection (a) of this section. The Panel must issue a final decision by the 40th day after the date on which it concludes the evidentiary proceedings.

§ 11126. Employee protective arrangements in transactions involving rail carriers

When approval is sought for a transaction under sections 11124 and 11125 of this title, the Panel 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 Panel (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).

§ 11127. Supplemental orders

When cause exists, the Panel may make appropriate orders supplemental to an order made in a proceeding under sections 11122 through 11126 of this title.

CHAPTER 113—FEDERAL-STATE RELATIONS

Sec.
11301. Tax discrimination against rail transportation property.
11302. Withholding State and local income tax by rail carriers.

§ 11301. 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 Panel, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Panel 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 Panel 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.

§ 11302. 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 Panel 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 115—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

Sec.
11501. General authority.
11502. Enforcement by the Panel.
11503. Enforcement by the Attorney General.
11504. Rights and remedies of persons injured by rail carriers.
11505. Limitation on actions by and against rail carriers.
11506. Liability of rail carriers under receipts and bills of lading.

§ 11501. General authority

(a) The Panel may begin an investigation under this part on its own initiative or on complaint. If the Panel finds that a rail carrier is violating this part, the Panel shall take appropriate action to compel compliance with this part.

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

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

§ 11502. Enforcement by the Panel

The Panel may bring a civil action—

(1) to enjoin a rail carrier from violating sections 10701 through 10706 of this title, or a regulation prescribed or order or certificate issued under any of those sections;

(2) to enforce subchapter II of chapter 111 of this title and to compel compliance with the order of the Panel under that subchapter; and

(3) to enforce an order of the Panel, 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 Panel under this part.

§ 11503. Enforcement by the Attorney General

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

§ 11504. 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 Panel under this part does not obey an order of the Panel, except an order for the payment of money, may bring a civil action to enforce that order under this subsection.

(b) A rail carrier providing transportation subject to the jurisdiction of the Panel 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.

(c)(1) A person may file a complaint with the Panel under section 11501(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 Panel under this part.

(2) When the Panel makes an award under subsection (b) of this section, the Panel shall order the rail carrier to pay the amount awarded by a specific date. The Panel may order a rail carrier providing transportation subject to the jurisdiction of the Panel under this part to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Panel 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 Panel requiring the payment of damages by a rail carrier providing transportation subject to the jurisdiction of the Panel under this part, the text of the order of the Panel 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 Panel 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.

§ 11505. Limitation on actions by and against rail carriers

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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 file a complaint with the Panel to recover damages under section 11504(b) of this title within 2 years after the claim accrues.

(c) 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 period under subsection (b) of this section is 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.

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

(e) 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.

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

§ 11506. Liability of rail carriers under receipts and bills of lading

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Panel 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 rail carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Panel 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 Panel 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.

CHAPTER 117—CIVIL AND CRIMINAL PENALTIES

Sec.
11701. General civil penalties.
11702. Interference with railroad car supply.
11703. Record keeping and reporting violations.
11704. Unlawful disclosure of information.
11705. Disobedience to subpoenas.
11706. General criminal penalty when specific penalty not provided.
11707. Punishment of corporation for violations committed by certain individuals.

§ 11701. General civil penalties

(a) Except as otherwise provided in this section, a rail carrier providing transportation subject to the jurisdiction of the Panel under this part, an officer or agent of that rail carrier, or a receiver, trustee, lessee, or agent of one of them, knowingly violating an order of the Panel under this part is liable to the United States Government for a civil penalty of $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 Panel under this part, or a receiver or trustee of that rail carrier, violating a regulation or order of the Panel under section 10924(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 10701 through 10706 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 Panel under section 10923 or 10924(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 109 of this title to make, prepare, preserve, or submit to the Panel a record concerning transportation subject to the jurisdiction of the Panel 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 Panel under this part, and a lessor, receiver, or trustee of that rail carrier, violating section 10944(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 Panel 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 Panel 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 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.

§ 11702. 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 Panel under this part intending to influence an action of that other person related to supply, distribution, or movement of cars or vehicles 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 Panel 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.

§ 11703. Record keeping and reporting violations

A person required to make a report to the Panel, or make, prepare, or preserve a record, under subchapter III of chapter 109 of this title about transportation subject to the jurisdiction of the Panel 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 Panel; or

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

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

§ 11704. Unlawful disclosure of information

(a) A—

(1) rail carrier providing transportation subject to the jurisdiction of the Panel 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 10509 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 or broker providing transportation subject to the jurisdiction of the Panel 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 Panel delegated to make an inspection or examination under section 10944 of this title who knowingly discloses information acquired during that inspection or examination, except as directed by the Panel, 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 10963 of this title by a rail carrier providing transportation subject to the jurisdiction of the Panel under this part shall be fined not more than $50,000.

§ 11705. Disobedience to subpoenas

A person not obeying a subpoena or requirement of the Panel 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.

§ 11706. 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 Panel 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. However, if the violation is for discrimination in rates charged for transportation, 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 section 11122 of this title continues.

§ 11707. 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 Panel 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.

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; and

(K) promote intermodal transportation; and

(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.

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

§ 13102. Definitions

In this part, the following definitions shall apply:

(1) 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.

(2) CARRIER.—The term "carrier" means a motor carrier, a water carrier, and a freight forwarder, and, for purposes of sections 13902, 13905, and 13906, the term includes foreign motor carriers and foreign motor private carriers.

(3) 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).

(4) 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.

(5) 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)).

(6) 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)).

(7) 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 part.

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

(8) HIGHWAY.—The term "highway" means a road, highway, street, and way in a State.

(9) 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.

(10) 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.

(11) MOTOR CARRIER.—The term "motor carrier" means a person providing motor vehicle transportation for compensation.

(12) 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.

(13) 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.

(14) 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.

(15) PANEL.—The term "Panel" means the Transportation Adjudication Panel.

(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 receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, 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 sec-

tion. 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 PANEL.—For those provisions of this part that are specified to be carried out by the Panel, the Panel 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 authority of each State in which it operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. 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 of this title, 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. 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 Panel shall 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 common 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 Panel, as applicable, finds it necessary to exercise jurisdiction to carry out the transportation policy of section 13101, neither the Secretary nor the Panel 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 Panel may require by regulation to carry out the provisions of such section 13506(a)(5). The Secretary or the Panel, or an employee designated by the Secretary or the Panel, 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 Panel 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 Panel containing answers to questions about transportation provided by such association or federation.

(c) ENFORCEMENT.—The Secretary or the Panel may bring a civil action to enforce subsections (a) and (b) of this section or a regulation or order of the Secretary or the Panel 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 Panel, 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 Government 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 has 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 Panel 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 Panel 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 Panel, as applicable, shall exempt a person, class of persons, or a transaction or service from the application 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 Panel finds that the application of that provision in whole or in part—

(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 Panel, as applicable, may, where appropriate, begin a proceeding under this section on the Secretary's or Panel's own initiative or on application by an interested party.

(c) PERIOD OF EXEMPTION.—The Secretary or Panel, as applicable, may specify the period of time during which an exemption granted under this section is effective.

(d) REVOCATION.—The Secretary or Panel, 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.—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 not terminated under section 13907(d)(2).

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. Billing and collecting practices. .
13708. Procedures for resolving claims involving unfiled, negotiated transportation rates.
13709. Additional motor carrier undercharge provisions.
13710. Alternative procedure for resolving undercharge disputes.
13711. Government traffic.
13712. 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 described in section 13102(9)(A), or

(B) a rate for a movement by or with a water carrier in noncontiguous domestic trade,

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 PANEL FOR VIOLATIONS.—When the Panel finds it necessary to stop or prevent a violation of subsection (a), the Panel shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

(c) ZONE OF REASONABLENESS.—

(1) IN GENERAL.—For purposes of this section, a rate or division of a carrier for service in noncontiguous domestic trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 10 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.

§ 13702. Tariff requirement for certain transportation

(a) IN GENERAL.—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 described in section 13102(9)(A);

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 Panel tariffs containing the rates established for such transportation or service. The carriers shall keep such tariffs available for public inspection. The Panel shall prescribe the form and manner of publishing, filing, and keeping tariffs available for public inspection under this subsection.

(2) CONTENTS.—The Panel 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 Panel 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 Panel 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 kept open for public inspection.

(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 tariff. The tariff must be submitted to the Panel for inspection 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 in a tariff in agreements covering the transportation of households described in section 13908.102(9)(B).

(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 Panel for resolution.

(d) INVALIDATION.—The Panel may invalidate a tariff prepared by a carrier or carriers under this section if that tariff violates this section or a regulation of the Panel 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 described in section 13102(9)(A);

(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 PANEL; APPROVAL.—An agreement entered into under subsection (a) may be submitted by any carrier or carriers that are parties to such agreement to the Panel for approval and may be approved by the Panel only if it finds that such agreement is in the public interest.

(3) CONDITIONS.—The Panel 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) INVESTIGATIONS.—The Panel may suspend and investigate the reasonableness of any classification or rate adjustment of general application made pursuant to an agreement under this section.

(5) EFFECT OF APPROVAL.—If the Panel 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 Panel, 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 Panel may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Panel, or its delegate, may inspect a record maintained under this section, or monitor any organization's compliance with this section.

(c) REVIEW.—The Panel 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 Panel 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 Panel, the agreement is unchanged, and the Panel approves such renewal. The Panel shall approve the renewal unless it finds that the renewal is not in the public interest.

(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 Panel 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) MILEAGE RATE LIMITATION.—No carrier subject to jurisdiction under subchapter I or III of chapter 135 may enforce collection of its mileage rates unless such carrier—

(1) uses an independent publication of mileage (other than a publication referred to in paragraph (2)) which can be examined by any interested person upon reasonable request; or

(2) is a participant in a publication of mileages formulated under an agreement approved under this section.

(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 PANEL.—When the Panel finds it necessary to enforce the requirements of this section, the Panel 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. Billing and collecting practices

(a) TIMING.—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.

(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.

§ 13708. Procedures for resolving claims involving unfiled, negotiated transportation rates

(a) TRANSPORTATION PROVIDED BEFORE EFFECTIVE DATE.—

(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, 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 with the Interstate Commerce Commission 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 Interstate Commerce Commission 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 FOR RESOLUTION OF SHOWINGS.—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 Panel. 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 UNDER DISPUTE RESOLUTION PROCEDURE.—Satisfaction of a claim under subsection (b), (c), or (d) shall be binding on the parties, and the parties shall not be subject to chapter 119, as in effect on the day before the effective date of this section.

(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 Panel.

(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 Panel.

(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 Panel.

(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 subsections (b), (c) or (d), the person may pursue all rights and remedies existing under this title on the day before the effective date of this section.

(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 Panel 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.

§ 13709. Additional motor carrier undercharge provisions

(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 agreed to between the shipper and carrier may have been based.

(2) REASONABLENESS OF RATES; COLLECTING ADDITIONAL CHARGES.—With respect to transportation provided before the effective date of this section, 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 Panel shall determine whether such rates and provisions are reasonable or applicable based on the record before it. 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 Panel 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.

(3) CHARGES BEFORE EFFECTIVE DATE.—With respect to transportation provided before the effective date of this section, if a shipper seeks to contest the charges originally billed or additional charges subsequently billed, the shipper may request that the Panel 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 re-

quired 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 Panel shall resolve the dispute.

§ 13710. 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 that was subject to jurisdiction under subchapter II of chapter 105 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 the applicable rate that was lawfully in effect pursuant to a tariff that was filed in accordance with chapter 107 of this title by the carrier or freight forwarder applicable to such transportation service and 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) of this title or is transporting property between places described in section 13501(1) of this title for the purpose of avoiding application of this section.

(b) JURISDICTION OF PANEL.—

(1) DETERMINATION.—The Panel 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 Panel 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 Panel 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 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 Commis-

sion 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 Panel 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, relating to a filed tariff rate and other general tariff requirements, as in effect on the day before such effective date.

(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 13708 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.

§ 13711. 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.

§ 13712. 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 motor carrier 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 Panel;

(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 Panel, 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.—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 REGARDING CERTAIN EXPRESS 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) TREATMENT.—Except as provided in section 14501(a), any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until the 30th day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph and the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation.

(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 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.

§ 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 willing and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Panel.

(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 motor carrier 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 willing and able to be a broker for transportation and to comply with this part and applicable regulations of the Secretary .

(b) LIMITATION.—

(1) REGISTRATION AS CARRIER REQUIRED.—The broker may provide transportation itself only if the broker also has registered to provide transportation as a carrier under this chapter.

(2) EXCEPTION.—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) IN GENERAL.—Each registration issued under section 13902, 13903, or 13904 shall be effective from the date specified by the Secretary and shall remain in effect, except as otherwise provided in this part.

(b) 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 Panel, or a condition of its registration.

(c) 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 of the registrant; and

(2) the registrant willfully does not comply with the order for a period of 30 days.

(d) 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 car-

rier 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) PANEL REVIEW.—The Panel, 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, online, 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.

(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 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).

(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(9)(A), to provide specified services under specified rates and conditions. If the shipper, in writing, expressly waives 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 this part and may not be subsequently challenged on the ground that it violates a provision of this part.

(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 Panel, 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 Panel, or an employee designated by the Secretary or Panel, 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 Panel, 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 Panel, as applicable, may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers.

§ 14123. Financial reporting

(a) IN GENERAL.—The Secretary shall require Class I motor carriers, and may require 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.

(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) EXEMPTION FROM PUBLIC RELEASE.—

(1) 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.

(2) PROCEDURE.—After a request under paragraph (1) 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.

(3) USE OF DATA FOR INTERNAL DOT PURPOSES.—If an exemption is granted under this subsection, 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.

(4) PERIOD OF EXEMPTIONS.—Exemptions granted under this subsection shall be for 3-year periods.

(5) PENDING REQUESTS.—The Secretary shall not release publicly the report of a carrier making a request under paragraph (1) while such request is pending.

(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.

§ 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 of this title 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 Panel under this section.

(b) STANDARDS FOR APPROVAL.—The Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel 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 Panel may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Panel to be just and reasonable.

(3) HEARING.—If the Panel 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 Panel 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 combina-

tion pending such hearing and final decision thereon. After such hearing, the Panel 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 Panel may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Panel to be just and reasonable.

(4) SPECIAL RULES FOR HOUSEHOLD GOODS CARRIERS.—In the case of an application for Panel 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 Panel 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 Panel 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 Panel 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 Panel 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.

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 two 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 two 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—

(i) at the request of a law enforcement officer; or

(ii) 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, or

(iv) antitrust immunity for joint line rates or routes, classifications, and mileage guides,

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 Panel 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) This subsection shall not apply with respect to the State of Hawaii until August 22, 1997.

§ 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 com-

merce 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) will be 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) will minimize the costs of complying with the registration system; and

(III) will result 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 a certificate or permit 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 Panel, as applicable, may begin an investigation under this part on the Secretary's or the Panel's own initiative or on complaint. If the Secretary or Panel, as applicable finds that a carrier or broker is violating this part, the Secretary or Panel, 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 Panel, 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 Panel, 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 Panel, 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 Panel 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 Panel, 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 Panel, 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 Panel, 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 of Transportation or Intermodal Surface Transportation Panel shall, bring court proceedings—

(1) to enforce this part or a regulation or order of the Secretary or Panel 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 Panel or term of registration under this part.

§ 14704. Rights and remedies of persons injured by carriers or brokers

(a) 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 Panel, as applicable, under this part, except an order for the pay-

ment of money, may bring a civil action to enforce that order under this subsection.

(b) LIABILITY AND DAMAGES.—

(1) LIABILITY 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 of this title.

(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.

(c) ELECTION.—

(1) COMPLAINT TO DOT OR PANEL; CIVIL ACTION.—A person may file a complaint with the Panel or the Secretary, as applicable, under section 14701(b) of this title or bring a civil action under subsection (b)(1) or (2) of this section to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

(2) ORDER OF DOT OR PANEL.—

(A) IN GENERAL.—When the Panel or Secretary, as applicable, makes an award under subsection (b) of this section, the Panel or Secretary, as applicable, shall order the carrier to pay the amount awarded by a specific date. The Panel 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 Panel 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 Panel 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 Panel 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 Panel 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.

(3) ATTORNEY'S FEES.—The district court shall award a reasonable attorney's fee as a part of the damages for which a carrier or broker is found liable under this subsection. The district court shall tax and collect that fee as a 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 Panel 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 Panel or Secretary, as applicable, to recover damages under section 14704(b)(2) of this title 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 subsection (b) of this section and the 2-year period under subsection (c) of this section are extended for 90 days from the time the 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) PAYMENT.—A person must begin a civil action to enforce an order of the Panel or Secretary against a carrier for the payment of money within 1 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 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 filed under section 13702 of this title. 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) LIMITATION OF LIABILITY BY CONTRACT.—A carrier may limit or be exempt from liability imposed under subsection (a) of this section by a mutual written agreement, that is referred to in the receipt, bill of lading, or contract for the transpor-

tation involved entered into with the shipper, to limit liability to a specified amount.

(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 (other than a rail 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 Panel 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.

(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 18 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 fees, 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 decision making process.

(5) LIMITATION ON FEES.—No fee of more than $25 may be charged a shipper for instituting an arbitration proceeding under this subsection. In any case in which a shipper is charged a fee under this paragraph for instituting an arbitration proceeding and such dispute is settled in favor of the shipper, the person settling the dispute must refund such fee to the shipper unless the person settling the dispute determines that such refund is inappropriate.

(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 motor 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 those types of household goods.

§ 14709. Tariff reconciliation rules for motor carriers of property

Subject to review and approval by the Panel, motor carriers subject to jurisdiction under subchapter I of chapter 135 (other than motor carriers providing transportation of household goods) and shippers may resolve, by mutual consent, overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications in compliance with sections 10761 and 10762 of this title 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 filed 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. Record keeping and reporting violations.
14908. Unlawful disclosure of information.
14909. Disobedience to subpoenas.
14910. General criminal 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.

§ 14901. General civil penalties

(a) REPORTING AND RECORDKEEPING.—A person required to make a report to the Secretary or the Panel, 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 Government 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 Panel 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.

§ 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 Government 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) CRIMINAL PENALTY FOR UNDERCHARGING.—A person that knowingly 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 less than the rate in effect under section 13702 shall be fined at least $1,000 but not more than $20,000, imprisoned for not more than 2 years, or both.

(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 at least $1,000 but not more than $20,000, imprisoned for 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 subsection (a) or (b) of 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) knowingly 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 knowingly and willfully 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,

shall be fined at least $200 for the first violation and at least $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 knowingly and willfully 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 sec-

tion 13702, shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

(2) AGENTS AND OTHERS.—A person that knowingly and willfully 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, shall be fined 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.—Any person who 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 Government for a civil penalty of not more than $10,000 for each violation.

(b) CRIMINAL PENALTIES.—Any person who knowingly violates section 14103(b) of this title shall be fined not more than $10,000, imprisoned for 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 knowingly and willfully tries to evade regulation provided under this part for carriers or brokers shall be fined at least $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 Panel, 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) willfully does not make that report;

(2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary or Panel, as applicable, requires the question to be answered;

(3) willfully does not make, prepare, or preserve 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;

(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 makes, prepares, or preserves a record in violation of an applicable regulation or order of the Secretary or Panel;

shall be fined 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 knowingly disclose to another person, except the shipper or consignee, and another person may not solicit, or knowingly 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) FINE; VENUE.—A person violating paragraph (1) of this subsection shall be fined not less than $2,000. Trial in a criminal action under this paragraph is in the judicial district in which any part of the violation is committed.

(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

A person not obeying a subpoena or requirement of the Secretary or the Panel to appear and testify or produce records shall be fined not less than $5,000, imprisoned for not more than 1 year, or both.

§ 14910. General criminal penalty when specific penalty not provided

When another criminal penalty is not provided under this chapter, a person that knowingly and willfully 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 under section 13902, shall be fined at least $500 for the first violation and at least $500 for a subsequent 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.—Any individual who has been found to have committed weight-bumping shall, for each offense, be fined at least $1,000 but not more than $10,000, imprisoned for 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.

SUBTITLE V—RAIL PROGRAMS

* * * * * * *

PART B—ASSISTANCE

CHAPTER 221—LOCAL RAIL FREIGHT ASSISTANCE

* * * * * * *

§ 22106. Limitations on financial assistance

(a) * * *

* * * * * * *

(e) RETENTION OF CONTINGENT INTEREST.—Each State shall retain a contingent interest (redeemable preference shares) for the Government's share of amounts in a rail line receiving assistance under this chapter. The State may collect its share of the amounts used for the rail line if—

(1) ⟦an application for abandonment of⟧ *a notice of intent to abandon* the rail line is filed under chapter 109 of this title; or

* * * * * * *

CHAPTER 247—AMTRAK ROUTE SYSTEM

* * * * * * *

§ 24705. Additional qualifying routes

(a) * * *

* * * * * * *

⟦(d) ROUTES DISCONTINUED BY RAIL CARRIERS.—Amtrak may undertake to provide rail passenger transportation between places

served by a rail carrier filing a notice of discontinuance under section 10908 or 10909 of this title.]

* * * * * * *

SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

* * * * * * *

PART B—COMMERCIAL

CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

* * * * * * *

SUBCHAPTER III—SAFETY REGULATION

* * * * * * *

§ 31132. Definitions

In this subchapter—

(1) "commercial motor vehicle" means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) * * *

[(B) is designed to transport more than 15 passengers including the driver; or]

(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

[(C)] *(D)* is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

* * * * * * *

§ 31138. Minimum financial responsibility for transporting passengers

(a) * * *

* * * * * * *

(c) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) * * *

* * * * * * *

(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.

* * * * * * *

(e) NONAPPLICATION.—This section does not apply to a motor vehicle—

(1) transporting only school children and teachers to or from school;

(2) providing taxicab service, having a seating capacity of not more than 6 passengers, and not being operated on a regular route or between specified places; [or]

(3) carrying not more than 15 individuals in a single, daily round trip to and from work[.]*; or*

(4) providing mass transportation service within a transit service area in other than urbanized areas under an agreement with a State or local government funded, in whole or in part, with a grant under section 5310 or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities; provided 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.

§ 31139. Minimum financial responsibility for transporting property

(a) * * *

* * * * * * *

(e) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) * * *

* * * * * * *

(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.

* * * * * * *

TITLE 5, UNITED STATES CODE

* * * * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

* * * * * * *

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

* * * * * * *

[Chairman, Interstate Commerce Commission.] *Director, Transportation Adjudication Panel.*

* * * * * * *

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services. * * *

[Members, Interstate Commerce Commission.] *Members, Transportation Adjudication Panel.*

* * * * * * *

CHAPTER 11 OF TITLE 11, UNITED STATES CODE

CHAPTER 11—REORGANIZATION

* * * * * * *

SUBCHAPTER IV—RAILROAD REORGANIZATION

* * * * * * *

[§ 1162. Definition

[In this subchapter, "Commission" means Interstate Commerce Commission.]

§ 1162. Definition

In this subchapter, "Panel" means the "Transportation Adjudication Panel".

* * * * * * *

§ 1164. Right to be heard

The [Commission] *Panel*, the Department of Transportation, and any State or local commission having regulatory jurisdiction over the debtor may raise and may appear and be heard on any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

* * * * * * *

§ 1170. Abandonment of railroad line

(a) The court, after notice and a hearing, may authorize the abandonment of a railroad line if such abandonment is—

(1)(A) in the best interest of the estate; or

(B) essential to the formulation of a plan; and

(2) consistent with the public interest.

(b) If, except for the pendency of the case under this chapter, such abandonment would require approval by the [Commission] *Panel* under a law of the United States, the trustee shall initiate an appropriate application for such abandonment with the [Com-

mission] *Panel*. The court may fix a time within which the [Commission] *Panel* shall report to the court on such application.

(c) After the court receives the report of the [Commission] *Panel*, or the expiration of the time fixed under subsection (b) of this section, whichever occurs first, the court may authorize such abandonment after notice to the [Commission] *Panel*, the Secretary of Transportation, the trustee, any party in interest that has requested notice, any affected shipper or community, and any other entity prescribed by the court, and a hearing.

(d)(1) Enforcement of an order authorizing such abandonment shall be stayed until the time for taking an appeal has expired, or, if an appeal is timely taken, until such order has become final.

(2) If an order authorizing the abandonment of a railroad line is appealed, the court, on request of a party in interest, may authorize termination of service on a line or a portion of a line pending the determination of such appeal, after notice to the [Commission] *Panel*, the Secretary of Transportation, the trustee, any party in interest that has requested notice, any affected shipper or community, and any other entity prescribed by the court, and a hearing. An appellant may not obtain a stay of the enforcement of an order authorizing such termination by the giving of a supersedeas bond or otherwise, during the pendency of such appeal.

* * * * * * *

§ 1171. Priority claims

(a) There shall be paid as an administrative expense any claim of an individual or of the personal representative of a deceased individual against the debtor or the estate, for personal injury to or death of such individual arising out of the operation of the debtor or the estate, whether such claim arose before or after the commencement of the case.

(b) Any unsecured claim against the debtor that would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the date of the order for relief under this title shall be entitled to such priority in the case under this chapter.

§ 1172. Contents of plan

(a) In addition to the provisions required or permitted under section 1123 of this title, a plan—

(1) shall specify the extent to and the means by which the debtor's rail service is proposed to be continued, and the extent to which any of the debtor's rail service is proposed to be terminated; and

(2) may include a provision for—

(A) the transfer of any or all of the operating railroad lines of the debtor to another operating railroad; or

(B) abandonment of any railroad line in accordance with section 1170 of this title.

(b) If, except for the pendency of the case under this chapter, transfer of, or operation of or over, any of the debtor's rail lines by an entity other than the debtor or a successor to the debtor under the plan would require approval by the [Commission] *Panel* under

a law of the United States, then a plan may not propose such a transfer or such operation unless the proponent of the plan initiates an appropriate application for such a transfer or such operation with the [Commission] *Panel* and, within such time as the court may fix, not exceeding 180 days, the [Commission] *Panel*, with or without a hearing, as the [Commission] *Panel* may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the [Commission] *Panel* approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5.

(c)(1) In approving an application under subsection (b) of this section, the [Commission] *Panel* shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section 11347 of title 49.

(2) Nothing in this subsection shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this subsection.

* * * * * * *

SECTION 6001 OF TITLE 18, UNITED STATES CODE

§ 6001. Definitions

As used in this chapter—

(1) "agency of the United States" means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Nuclear Regulatory Commission, the Board of Governors of the Federal Reserve System, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Commodity Futures Trading Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the [Interstate Commerce Commission] *Transportation Adjudication Panel*, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

* * * * * * *

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle C—Employment Taxes

* * * * * * *

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

* * * * * * *

Subchapter D—General Provisions

* * * * * * *

SEC. 3231. DEFINITIONS.

(a) EMPLOYER.—For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The [Interstate Commerce Commission] *Transportation Adjudication Panel* is hereby authorized and directed upon request of the Secretary, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (45 U.S.C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

* * * * * * *

(g) CARRIER.—For purposes of this chapter, the term "carrier" means [an express carrier, sleeping car carrier, or] *a* rail carrier

providing transportation subject to subchapter I of chapter 105 of title 49.

* * * * * * *

Subtitle F—Procedure and Administration

* * * * * * *

CHAPTER 79—DEFINITIONS

* * * * * * *

SEC. 7701. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) * * *

* * * * * * *

(33) REGULATED PUBLIC UTILITY.—The term "regulated public utility" means—

(A) * * *

(B) A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the [Federal Power Commission] *Federal Energy Regulatory Commission*.

(C) A corporation engaged as a common carrier (i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the [Interstate Commerce Commission] *Transportation Adjudication Panel*, or (ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the [Interstate Commerce Commission] *Federal Energy Regulatory Commission* or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

* * * * * * *

(F) A corporation engaged in the furnishing or sale of transportation by common carrier by water, subject to the jurisdiction of the [Interstate Commerce Commission under subchapter III of chapter 105] *Transportation Adjudication Panel under subchapter II of chapter 135* of title 49, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933.

(G) A railroad corporation subject to [subchapter I of chapter 105] *part A of subtitle IV* of title 49, if (i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954, (ii) each lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases

and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H) A common parent corporation which is a common carrier by railroad subject to [subchapter I of chapter 105] *part A of subtitle IV* of title 49 if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

The term "regulated public utility" does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary that (i) its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and (ii) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

* * * * * * *

TITLE 28, UNITED STATES CODE

* * * * * * *

PART VI—PARTICULAR PROCEEDINGS

Chap.		Sec.
151.	Declaratory Judgments	2201

* * * * * * *

157. [Interstate Commerce Commission] *Transportation Adjudication Panel* Orders; Enforcement and Review 2321

* * * * * * *

CHAPTER 157—[INTERSTATE COMMERCE COMMISSION] *TRANSPORTATION ADJUDICATION PANEL* ORDERS; ENFORCEMENT AND REVIEW

Sec.
2321. Judicial review of [Commission's] *Panel's* orders and decisions; procedure generally; process.

* * * * * * *

§ 2321. Judicial review of [Commission's] *Panel's* orders and decisions; procedure generally; process

(a) Except as otherwise provided by an Act of Congress, a proceeding to enjoin or suspend, in whole or in part, a rule, regulation, or order of the [Interstate Commerce Commission] *Transportation Adjudication Panel* shall be brought in the court of appeals as provided by and in the manner prescribed in chapter 158 of this title.

(b) The procedure in the district courts in actions to enforce, in whole or in part, any order of the [Interstate Commerce Commission] *Transportation Adjudication Panel* other than for payment of money or the collection of fines, penalties, and forfeitures, shall be as provided in this chapter.

(c) The orders, writs, and process of the district courts may, in the cases specified in subsection (b) and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49, run, be served and be returnable anywhere in the United States.

* * * * * * *

§ 2323. Duties of Attorney General; intervenors

The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49.

The [Interstate Commerce Commission] *Transportation Adjudication Panel* and any party or parties in interest to the proceeding before the [Commission] *Panel*, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party. Communities, associations, corporations, firms, and individuals interested in the controversy or question before the [Commission] *Panel*, or in any action commenced under the aforesaid sections may intervene in said action at any time after commencement thereof.

The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or nonaction of the Attorney General therein.

CHAPTER 158—ORDERS OF FEDERAL AGENCIES; REVIEW

* * * * * * *

§ 2341. Definitions

As used in this chapter—

(1) * * *

* * * * * * *

(3) "agency" means—

(A) the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, the Federal Maritime Commission, [the Interstate Commerce Commission,] or the Atomic Energy Commission, as the case may be;

(B) the Secretary, when the order was entered by the Secretary of Agriculture or the Secretary of Transportation;

(C) the Administration, when the order was entered by the Maritime Administration; [and]

(D) the Secretary, when the order is under section 812 of the Fair Housing Act[.]*; and*

(E) the Panel, when the order was entered by the Transportation Adjudication Panel.

* * * * * * *

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) * * *

* * * * * * *

(3) all rules, regulations, or final orders of—

(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, 41, or 43 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839, and 841a) *or pursuant to part B of subtitle IV of title 49, United States Code*; and

* * * * * * *

[(5) all rules, regulations, or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title and all final orders of such Commission made reviewable under section 11901(j)(2) of title 49, United States Code;]

(5) all rules, regulations, or final orders of the Transportation Adjudication Panel made reviewable by section 2321 of this title; and

* * * * * * *

TITLE 39, UNITED STATES CODE

PART V—TRANSPORTATION OF MAIL

* * * * * * *

CHAPTER 50—GENERAL

* * * * * * *

§ 5005. Mail transportation

(a) * * *

* * * * * * *

(b)(1) Contracts for the transportation of mail procured under subsection (a)(4) of this section shall be for periods not in excess of 4 years (or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years) and shall be entered into only after advertising a sufficient time previously for proposals. The Postal Service, with the consent of the holder of any such contract, may adjust the compensation allowed under that contract for increased or decreased costs resulting from changed conditions occurring during the term of the contract.

* * * * * * *

(3) Any contract between the Postal Service and any carrier or person for the transportation of mail shall be available for inspection in the office of the Postal Service and either the [Interstate Commerce Commission] *Transportation Adjudication Panel* or the Secretary of Transportation if for the carriage of mail in foreign air transportation (as defined in section 40102(a) of title 49), as appropriate, and in post offices on the post roads involved as determined by the Postal Service, at least 15 days prior to the effective date of the contract.

* * * * * * *

CHAPTER 52—TRANSPORTATION OF MAIL BY SURFACE CARRIER

Sec.
5201. Definitions.

* * * * * * *

5207. [Interstate Commerce Commission] *Transportation Adjudication Panel* to fix rates.

* * * * * * *

§ 5201. Definitions

For purposes of this chapter—

[(1) "Commission" means the Interstate Commerce Commission;]

(1) "Panel" means the Transportation Adjudication Panel;

* * * * * * *

(4) "freight forwarder" means any regulated freight forwarder which holds itself out to the general public as a com-

mon carrier to transport or provide transportation of property as authorized by a permit issued by the [Commission] *Panel*;

(5) "motor common carrier" means a motor common carrier, except a passenger-carrying motor vehicle of such a carrier, within the meaning of section 10102(13) of title 49, that holds a certificate of public convenience and necessity issued by the [Commission] *Panel*;

* * * * * * *

(7) "person" includes any person other than a carrier holding a certificate of public convenience and necessity issued by the [Commission] *Panel*; and

* * * * * * *

§ 5203. Authorization of service by carrier

(a) * * *

* * * * * * *

[(f) Any order or determination of the Postal Service providing for the transportation of mail by a motor common carrier shall be filed with the Commission. If the Commission finds, within 90 days after the filing, that the order or determination will be detrimental to the motor common carrier or its other customers, or that such carrier does not operate equipment suitable for the transportation of mail, the order or determination shall be terminated.]

[(g)] *(f)* An order or determination of the Postal Service under this section shall be consistent with the orders of the [Commission] *Panel* under sections 5207 and 5208 of this title.

* * * * * * *

§ 5207. [Interstate Commerce Commission] *Transportation Adjudication Panel* to fix rates

(a) The [Commission] *Panel* shall determine and fix the fair and reasonable rates or compensation for the transportation of mail by carrier and the service connected therewith, and shall prescribe the method of computing such rates or compensation. The [Commission] *Panel* shall publish its orders stating its determination under this section which shall remain in force until changed by it after notice and hearing.

(b) For the purpose of determining and fixing rates or compensation under this section, the [Commission] *Panel* may make just and reasonable classifications of carriers and, where just and equitable, fix general rates applicable to carriers in the same classification.

(c) In determining and fixing fair and reasonable rates or compensation under this section, the [Commission] *Panel* shall consider the relation between the Government and carriers as public service corporations, and the nature of public service as distinguished, if there is a distinction, from the ordinary transportation business of the carriers.

(d) Initial rates or compensation for mail transportation service by any carrier or carriers shall be those agreed to by the Postal Service and the carrier or carriers, and such rates or compensation

shall continue in effect until such time as the [Commission] *Panel* fixes the rates or compensation under subsection (a) of this section.

§ 5208. Procedures

(a) At any time after 6 months from the entry of an order stating the [Commission's] *Panel's* determination under section 5207 of this title, the Postal Service or an interested carrier may apply for a reexamination and substantially similar proceedings as have theretofore been had shall be followed with respect to the rates of compensation for services covered by the application. At the conclusion of the hearing the [Commission] *Panel* shall enter an order stating its determination.

* * * * * * *

(c) The Postal Service may file with the [Commission] *Panel* a comprehensive plan stating—

(1) * * *

* * * * * * *

(5) all other information which may be material to the inquiry, but such other information may be filed at any time in the discretion of the [Commission] *Panel*.

(d) When a comprehensive plan is filed, the [Commission] *Panel* shall give notice of not less than 30 days to each carrier required by the Postal Service to transport mail pursuant to such plan. A carrier may file its answer at the time fixed by the [Commission] *Panel*, but not later than 30 days after the expiration date fixed by the [Commission] *Panel* in the notice, and the [Commission] *Panel* shall proceed with the hearing.

§ 5209. Special rates

Upon petition by the Postal Service, the [Commission] *Panel* shall determine and fix carload or truckload, or less than carload or truckload, rates for the transportation of mail not entitled to high priority in transportation. A carrier shall perform the service at the rates so determined when requested to do so and under the conditions prescribed by the Postal Service.

* * * * * * *

§ 5212. Special contracts

The Postal Service may enter into special contracts with any carrier or person, without advertising, for bids and for periods not in excess of 4 years. It may contract to pay lower rates or compensation or, where in its judgment conditions warrant, higher rates or compensation than those determined or fixed by the [Commission] *Panel*. The fact that the [Commission] *Panel* has not prescribed rates or compensation for the carrier involved, under section 5207 of this title, shall not preclude execution of a contract under this section. Such contracts may be negotiated only after reasonable notice has been posted in advance in post offices on the post roads to be served, and other carriers or persons have been given an opportunity to offer to negotiate for the transportation of mail.

* * * * * * *

§ 5215. Star route certification

(a) Any person who was a contractor under a star route, mail messenger, or contract motor vehicle service contract on the effective date of this section (or successor in interest to any such person), shall, upon application to the [Commission] *Panel* for the territory within which such contractor operated on or before the effective date of this section be issued a certificate of public convenience and necessity as a motor common carrier for the transportation of mail by the [Commission] *Panel* without the [Commission's] *Panel's* requiring further proof that the public convenience and necessity will be served by such operation and without further proceedings.

(b) Applications of persons who were not contractors on the effective date of this section shall be decided in accordance with applicable [Commission] *Panel* procedure.

* * * * * * *

SECTION 201 OF THE AGRICULTURAL ADJUSTMENT ACT OF 1938

ADJUSTMENTS IN FREIGHT RATES FOR FARM PRODUCTS

SEC. 201. (a) The Secretary of Agriculture is authorized to make complaint to the [Interstate Commerce Commission] *Transportation Adjudication Panel* with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the [Commission] *Panel*. Before hearing or disposing of any complaint (filed by any person other than the Secretary) with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, the [Commission] *Panel* shall cause the Secretary to be notified, and, upon application by the Secretary, shall permit the Secretary to appear and be heard.

(b) If such rate, charge, tariff, or practice complained of is one affecting the public interest, upon application by the Secretary, the [Commission] *Panel* shall make the Secretary a party to the proceeding. In such case the Secretary shall have the rights of a party before the [Commission] *Panel* and the rights of a party to invoke and pursue original and appellate judicial proceedings involving the [Commission's] *Panel's* determination. The liability of the Secretary in any such case shall extend only to liability for court costs.

(c) For the purposes of this section, the [Interstate Commerce Commission] *Transportation Adjudication Panel* is authorized to avail itself of the cooperation, records, services, and facilities of the Department of Agriculture.

(d) The Secretary is authorized to cooperate with and assist cooperative associations of farmers making complaint to the [Interstate Commerce Commission] *Transportation Adjudication Panel* with respect to rates, charges, tariffs, and practices relating to the transportation of farm products.

SECTION 15 OF THE ANIMAL WELFARE ACT

SEC. 15. (a) The Secretary shall consult and cooperate with other Federal departments, agencies, or instrumentalities concerned with the welfare of animals used for research, experimentation or exhibition or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 13 and in carrying out the purposes of this Act. The Secretary shall consult with the Secretary of Health and Human Services prior to issuance of regulations. Before promulgating any standard governing the air transportation and handling in connection therewith, of animals, the Secretary shall consult with the Secretary of Transportation who shall have the authority to disapprove any such standard if he notifies the Secretary, within 30 days after such consultation, that changes in its provisions are necessary in the interest of flight safety. The [Interstate Commerce Commission] *Transportation Adjudication Panel*, the Secretary of Transportation, and the Federal Maritime Commission, to the extent of their respective lawful authorities, shall take such action as is appropriate to implement any standard established by the Secretary with respect to a person subject to regulation by it.

* * * * * * *

SECTION 401 OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

EXTENSION OF CREDIT BY REGULATED INDUSTRIES

SEC. 401. The Secretary of Transportation, the Federal Communications Commission, and the [Interstate Commerce Commission shall each promulgate, within ninety days after the date of enactment of this Act] *Transportation Adjudication Panel shall each maintain*, its own regulations with respect to the extension of credit, without security, by any person regulated by such Secretary under subpart II of part A of subtitle VII of title 49, United States Code, or such Commission *or Board*, to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office.

SECTION 621 OF THE FAIR CREDIT REPORTING ACT

§ 621. Administrative enforcement

(a) * * *

(b) Compliance with the requirements imposed under this title with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

(1) * * *

* * * * * * *

(4) the Acts to regulate commerce, by the [Interstate Commerce Commission with respect to any common carrier subject

to those Acts] *Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Transportation Adjudication Panel*;

* * * * * * *

SECTION 704 OF THE EQUAL CREDIT OPPORTUNITY ACT

§ 704. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under:

(1) * * *

* * * * * * *

(4) The Acts to regulate commerce, by the [Interstate Commerce Commission with respect to any common carrier subject to those Acts] *Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Transportation Adjudication Panel*.

* * * * * * *

SECTION 814 OF THE FAIR DEBT COLLECTION PRACTICES ACT

§ 814. Administrative enforcement

(a) * * *

(b) Compliance with any requirements imposed under this title shall be enforced under—

(1) * * *

* * * * * * *

(4) the Acts to regulate commerce, by the [Interstate Commerce Commission with respect to any common carrier subject to those Acts] *Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Transportation Adjudication Panel*;

* * * * * * *

NATIONAL TRAILS SYSTEM ACT

* * * * * * *

STATE AND METROPOLITAN AREA TRAILS

SEC. 8. (a) * * *

* * * * * * *

(d) The Secretary of Transportation, the [Chairman of the Interstate Commerce Commission] *Director of the Transportation Adjudication Panel*, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the

national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with the National Trails System Act, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the [Commission] *Panel* shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this Act, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

* * * * * * *

RIGHTS-OF-WAY AND OTHER PROPERTIES

SEC. 9. (a) * * *

(b) The Department of Defense, the Department of Transportation, the [Interstate Commerce Commission] *Transportation Adjudication Panel*, the Federal Communications Commission, the Federal Power Commission, and other Federal agencies have jurisdiction or control over or information concerning the use, abandonment, or disposition of road ways, utility rights-of-way, or other properties which may be suitable for the purpose of improving or expanding the national trails system shall cooperate with the Secretary of the Interior and the Secretary of Agriculture in order to assure, to the extent practicable, that any such properties having values suitable for trail purposes may be made available for such use.

* * * * * * *

CLAYTON ACT

* * * * * * *

SEC. 7. That no person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

* * * * * * *

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided,* That nothing in this section shall be held or construed to authorize or made lawful

anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Communications Commission, Federal Power Commission, [Interstate Commerce Commission] *Transportation Adjudication Panel*, the Securities and Exchange Commission in the exercise of its jurisdiction under section 10 of the Public Utility Holding Company Act of 1935, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission*, Board,* or Secretary.

* * * * * * *

SEC. 11. (a) That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested in the [Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended] *Transportation Adjudication Panel where applicable to common carriers subject to subtitle IV of title 49, United States Code*; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject t±o the Federal Aviation Act of 1958; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

* * * * * * *

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided,* That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit [in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission] *for injunctive relief against any common carrier subject to the jurisdiction of the Transportation Adjudication Panel under subtitle IV of title 49, United States Code*. In any action under this section in which the plaintiff substantially prevails, the court shall award

the cost of suit, including a reasonable attorney's fee, to such plaintiff.

* * * * * * *

SECTION 8G OF THE INSPECTOR GENERAL ACT

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) * * *

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, [the Interstate Commerce Commission,] the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States International Trade Commission, and the United States Postal Service;

* * * * * * *

SECTION 1340 OF THE ENERGY POLICY ACT OF 1992

SEC. 1340. ESTABLISHMENT OF DATA BASE AND STUDY OF TRANSPORTATION RATES.

(a) DATA BASE.—The Secretary shall review the information currently collected by the Federal Government and shall determine whether information on transportation rates for rail and pipeline transport of domestic coal, oil, and gas during the period of January 1, 1988, through December 31, 1997, is reasonably available. If he determines that such information is not reasonably available, the Secretary shall establish a data base containing, to the maximum extent practicable, information on all such rates. The confidentiality of contract rates shall be preserved. To obtain data pertaining to rail contract rates, the Secretary shall acquire such data in aggregate form only from the [Interstate Commerce Commis-

sion] *Transportation Adjudication Panel*, under terms and conditions that maintain the confidentiality of such rates.

* * * * * * *

(d) CONSULTATION WITH OTHER AGENCIES.—The Secretary and the Energy Information Administration shall consult with the Chairmen of the Federal Energy Regulatory Commission and the [Interstate Commerce Commission] *Transportation Adjudication Panel* in implementing this section.

MERCHANT MARINE ACT, 1920

* * * * * * *

Sec. 8. That it shall be the duty of the Secretary of Transportation, in cooperation with the Secretary of War, with the object of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which he has jurisdiction, to investigate territorial regions and zones tributary to such ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce; to investigate the causes of the congestion of commerce at ports and the remedies applicable thereto; to investigate the subject of water terminals, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, with a view to devising and suggesting the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities regarding the appropriate location and plan of construction of wharves, piers, and water terminals; to investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight which would naturally pass through such ports: *Provided,* That if after such investigation the Secretary of Transportation shall be of the opinion that rates, charges, rules, or regulations of common carriers by rail subject to the jurisdiction of the [Interstate Commerce Commission] *Transportation Adjudication Panel* are detrimental to the declared object of this section, or that new rates, charges, rules, or regulations new or additional port terminal facilities, or affirmative action on the part of such common carriers by rail is necessary to promote the objects of this section, the Secretary of Transportation may submit his findings to the [Interstate Commerce Commission] for such action as such [commission] *board* may consider proper under existing law.

* * * * * * *

SEC. 28. That no common carrier shall charge, collect, or receive, for transportation subject to the Interstate Commerce Act of persons or property, under any joint rate, fare, or charge, or under any export, import or other proportional rate, fare, or charge, which is based in whole or in part on the fact that the persons or property affected thereby is to be transported to, or has been transported from any port in a possession or dependency of the United States,

or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than that charged, collected, or received by it for the transportation of persons, or of a like kind of property, for the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is, or unless it was at the time of such transportation by water, documented under the laws of the United States. Whenever the Secretary of Transportation is of the opinion, however, that adequate shipping facilities to or from any port in a possession or dependency of the United States or a foreign country are not afforded by vessels so documented, he shall certify this fact to the [Interstate Commerce Commission] *Transportation Adjudication Panel*, and the [commission] *Panel* may, by order suspend the operation of the provisions of this section with respect to the rates, fares, and charges for the transportation by rail and persons and property transported from, or to be transported to, such ports, for such length of time and under such terms and conditions as it may prescribe in such order or in any order supplemental thereto. Such suspension of operation of the provisions of this section may be terminated by order of the [commission] *Panel* whenever the Secretary of Transportation is of the opinion that adequate shipping facilities by such vessels to such ports are afforded and shall so certify to the [commission] *Panel*.

* * * * * * *

SECTION 1 OF THE RAILWAY LABOR ACT

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any [express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act] *railroad subject to the jurisdiction of the Transportation Adjudication Panel*, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The [Interstate Commerce Commission] *Transportation Adjudication Panel* is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within

the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

* * * * * * *

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the [Interstate Commerce Commission] *Transportation Adjudication Panel* now in effect, and as the same may be amended or interpreted by orders hereafter entered by the [Commission] *Panel* pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the [Interstate Commerce Commission] *Transportation Adjudication Panel* shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the [Commission] *Panel*.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

* * * * * * *

SECTION 1 OF THE RAILROAD RETIREMENT ACT OF 1974

DEFINITIONS

SECTION 1. For the purposes of this Act—

(a)(1) The term "employer" shall include—

[(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;]

(i) any carrier by railroad subject to the jurisdiction of the Transportation Adjudication Panel under part A of subtitle IV of title 49, United States Code;

* * * * * * *

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the term "employer" shall not include—

(i) * * *

(ii) any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general diesel-railroad system of transportation, but shall not exclude any part of the general diesel-railroad system of transportation now or hereafter operated by any other motive power. The [Interstate Commerce Commission is hereby authorized and directed upon

request of the Board] *Transportation Adjudication Panel is hereby authorized and directed upon request of the Railroad Retirement Board*, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this paragraph.

* * * * * * *

(o) An individual shall be deemed to have a "current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this Act begins to accrue to him or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, *the Transportation Adjudication Panel,* the National Mediation Board, the National Transportation Safety Board, the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For purposes of section 2(b) and section 2(d) only, an individual shall be deemed also to have a "current connection with the railroad industry" if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this Act and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service. For purposes of section 2(d) only, an individual shall be deemed to have a "current connection with the railroad industry" if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937. For the purposes of section 2(d) only, an individual shall be deemed also to have a "current connection with the railroad industry" if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act if his service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

* * * * * * *

RAILROAD UNEMPLOYMENT INSURANCE ACT

DEFINITIONS

SECTION 1. For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term "employer" means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or

under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad or the receipt, delivery, elevation, transfer in transit, refrigeration, or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The ⟦Interstate Commerce Commission is hereby authorized and directed upon request of the Board⟧ *Transportation Adjudication Panel is hereby authorized and directed upon request of the Railroad Retirement Board*, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and by-laws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

⟦(b) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.⟧

(b) The term "carrier" means a railroad subject to the jurisdiction of the Transportation Adjudication Panel under part A of subtitle IV of title 49, United States Code.

* * * * * * *

BENEFITS

SEC. 2. (a) * * *

* * * * * * *

(h)(1) * * *

* * * * * * *

(3) For purposes of subdivision (2) of this subsection, the term "rate of railroad unemployment" for a month means the percentage

arrived at by dividing: (A) the average weekly number of individuals who filed bona fide claims for benefits for days of unemployment in such month, excluding from such number those individuals whose unemployment was due to a stoppage of work because of a strike, lockout, or other labor dispute, by (B) the average midmonth count of employees of class I railroads and class I switching and terminal companies, as reported to the [Interstate Commerce Commission, adjusted, as determined by the Board] *Transportation Adjudication Panel, adjusted, as determined by the Railroad Retirement Board*, to include all employees covered by this Act of the twelve months ending with the second calendar quarter preceding such month.

* * * * * * *

EMERGENCY RAIL SERVICES ACT OF 1970

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) "Secretary" means the Secretary of Transportation.

[(2) "Commission" means the Interstate Commerce Commission.]

(2) "Panel" means the Transportation Adjudication Panel.

* * * * * * *

FINANCIAL ASSISTANCE

SEC. 3. (a) The trustees of any railroad undergoing reorganization under section 77 of the Bankruptcy Act, as amended (11 U.S.C. 205), upon approval of the court, may apply to the Secretary for the guarantee of certificates. The Secretary, after consultation with the [Commission] *Panel*, authorized to guarantee such certificates upon findings in writing that—

(1) * * *

* * * * * * *

(b) As a condition to a guarantee, the Secretary, after consultation with the [Commission] *Panel* shall require that:

(1) * * *

* * * * * * *

(4) in the event of actual or threatened cessation of essential transportation services by the railroad, the Secretary shall have the option to procure by purchase or lease trackage rights over the lines of the railroad and such equipment as may be necessary to provide such services by the Secretary or his assignee, and, in the event of a default in the payment of principal or interest as provided by the certificates, the money paid or expenses incurred by the United States as a result thereof shall be deemed to have been applied to the purchase or lease price. The terms of purchase or lease shall be subject to the approval of the reorganization court and the operation over the lines shall be subject to the approval of the [Commission] *Panel* pursuant to the provisions of section 5 of the Interstate Commerce Act, but in no event shall the rendition of services

by the Secretary or his assignee await the outcome of proceedings before the reorganization court or the [Commission] *Panel*.

* * * * * * *

ASSISTANCE OF DEPARTMENTS AND OTHER AGENCIES

SEC. 6. (a) In carrying out the provisions of this Act the Secretary may use available services and facilities of other departments, agencies, and instrumentalities of the Federal Government with their consent and on a reimbursable basis, and shall consult with the [Interstate Commerce Commission] *Panel* in carrying out the provisions of this Act.

(b) Departments, agencies, and instrumentalities of the Federal Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the provisions of this Act.

* * * * * * *

SECTION 608 OF THE ALASKA RAILROAD TRANSFER ACT OF 1982

* * * * * * *

TITLE VI—ALASKA RAILROAD TRANSFER

SHORT TITLE

SEC. 601. This title may be cited as the "Alaska Railroad Transfer Act of 1982".

* * * * * * *

STATE OPERATION

SEC. 608. (a)(1) After the date of transfer to the State pursuant to section 604 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the [Interstate Commerce Commission] *Transportation Adjudication Panel* under chapter 105 of subtitle IV of title 49, United States Code, and all other Acts applicable to rail carriers subject to that chapter, including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this title shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

(2) The transfer to the State authorized by section 604 of this title and the conferral of jurisdiction to the [Interstate Commerce Commission] *Transportation Adjudication Panel* pursuant to paragraph (1) of this subsection are intended to confer upon the State-

owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of title 49, United States Code, notwithstanding any participation in such agreements by connecting water carriers.

* * * * * * *

(b) As soon as practicable after the date of enactment of this Act, the [Interstate Commerce Commission] *Transportation Adjudication Panel* shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of title 49, United States Code (49 U.S.C. 10781 et seq.) shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the [Commissions] *Panel* under this subsection.

(c) The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to the jurisdiction of the [Interstate Commerce Commission] *Transportation Adjudication Panel* under chapter 105 of subtitle IV of title 49, United States Code.

* * * * * * *

REGIONAL RAIL REORGANIZATION ACT OF 1973

* * * * * * *

TITLE III—CONSOLIDATED RAIL CORPORATION

* * * * * * *

TERMINATION AND CONTINUATION OF RAIL SERVICES

SEC. 304. (a) * * *

* * * * * * *

(d) RAIL FREIGHT SERVICE.—(1) * * *

* * * * * * *

(3) If necessary to prevent any disruption or loss of rail service, at any time after the date of conveyance, pursuant to section 303(b)(1) of [this title, the Commission—

[(A) shall take] *this title, the Commission shall take* such action as may be appropriate under its existing authority (including the enforcement of common carrier requirements applicable to railroads in reorganization in the region) to ensure compliance with obligations imposed under [this subsection; and

[(B) shall have authority, in accordance with the provisions of section 1(16)(b) of the Interstate Commerce Act (49 U.S.C. 1(16)(b)), to direct rail service to be provided by any designated railroad or by the trustees of a railroad in reorganization in the region, if a rail service continuation payment has been of-

fered but an applicable operating or lease agreement is not in effect.

For purposes of the preceding sentence, any compensation required as a result of such directed service shall be determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act] *this subsection*. The district courts of the United States shall have jurisdiction, upon petition by the Commission or any interested person (including a government entity), to enforce any order of the Commission issued pursuant to the exercise of its authority under this subsection, or to enjoin any designated entity or the trustees of a railroad in reorganization in the region from refusing to comply with the provisions of this subsection.

* * * * * * *

TITLE VII—PROTECTION OF EMPLOYEES

* * * * * * *

CONTRACTING OUT

SEC. 707. *(a)* All work in connection with the operation or services provided by the Corporation on the rail lines, properties, equipment, or facilities acquired pursuant to the provisions of this Act and the maintenance, repair, rehabilitation, or modernization of such lines, properties, equipment, or facilities which has been performed by practice or agreement in accordance with provisions of the existing contracts in effect with the representatives of the employees of the classes or crafts involved shall continue to be performed by the Corporation's employees, including employees on furlough. Should the Corporation lack a sufficient number of employees, including employees on furlough, and be unable to hire additional employees, to perform the work required, it shall be permitted to subcontract that part of such work which cannot be performed by its employees, including those on furlough, except where agreement by the representatives of the employees of the classes or crafts involved is required by applicable collective-bargaining agreements. The term "unable to hire additional employees" as used in this section contemplates establishment and maintenance by the Corporation of an apprenticeship, training, or recruitment program to provide an adequate number of skilled employees to perform the work.

(b) Notwithstanding any other provision of this Act or any agreement or arrangement in effect as of the date of the enactment of this subsection, the Corporation may not sell or transfer ownership or management, in whole or in part, of any facility acquired by the Corporation under this Act that is used for the repair, rehabilitation, or maintenance of cars or locomotives, without first obtaining the expess consent of the authorized representatives of the employees at such facility covered by collective bargaining agreements. Any transaction undertaken in violation of this subsection or subsection (c) shall be considered in violation of section 6 of the Railway Labor Act, and shall be actionable as such.

(c) Notwithstanding any other provision of this Act or any agreement or arrangement in effect as of the date of the enactment of this subsection, any transfer by the Corporation of ownership, in whole

or in part, other than for scrappage, of a car or locomotive that was repaired, rehabilitated, or maintained, before the date of the enactment of this subsection, at a facility acquired by the Corporation under this Act, without first obtaining the express consent of the authorized representatives of the employees at the Corporation's principal maintenance facility covered by collective bargaining agreements, is prohibited.

* * * * * * *

SECTION 18 OF THE MILWAUKEE RAILROAD RESTRUCTURING ACT

[DIRECTED SERVICE

[SEC. 18. (a) Except as provided in subsection (b) of this section, until April 1, 1981, the provisions of this Act shall be in lieu of any directed service on any line of the Milwaukee Railroad under section 11125 of title 49 of the United States Code.

[(b) The Commission shall upon request provide for directed service, not to exceed 30 days during the period immediately prior to acquisition, on the Milwaukee Railroad under section 11125 of title 49, United States Code. Such directed service shall be limited to those lines or line segments where legislation has been enacted by a State legislature prior to the date of enactment of this subsection which would provide for such State to tender a bona fide offer for acquisition of such lines or line segments. The Commission may order directed service by the Milwaukee Railroad under this subsection without inclusion of a 6 percent profit factor. The Commission shall take the action described in this subsection only in the event that the Secretary of Transportation determines that such service cannot be continued under the Emergency Rail Service Assistance Act.]

ROCK ISLAND RAILROAD TRANSITION AND EMPLOYEE ASSISTANCE ACT

* * * * * * *

SEC. 104. (a) Notwithstanding the provisions of [section 11125 of title 49, United States Code, or] Public Law 96–131, the Commission shall order directed service for a period of not to exceed 90 days over any line of the Rock Island Railroad if the Secretary finds and certifies to the Commission that—

(1) a lack of rail service exists which cannot be resolved by a grant of interim operating authority over such line and grains or foods are ready to be shipped to market; or

* * * * * * *

[DIRECTED SERVICES

[SEC. 120. (a) In the event agreement cannot be reached between any railroad subject to section 77 of the Bankruptcy Act, or subchapter IV of chapter 11 of title 11, United States Code, which has ceased to provide passenger commuter service over any line of the

railroad and any party desiring to provide commuter service, the Commission shall order directed service, for the 3-year period beginning on the date of enactment of this Act, over any passenger commuter line of the railroad that was in operation on March 1, 1980, if the directed service carrier agrees to provide such service without payment under section 11125(b)(5) of title 49 of the United States Code. If the parties are unable to agree on compensation, the trustee of the railroad shall receive compensation for the property and facilities of the railroad on terms determined by the Commission to be reasonable.

[(b) Notwithstanding any other provision of law, a passenger commuter line of any railroad over which directed service is provided pursuant to this section may not be abandoned, and service over such line may not be discontinued, during the period of such directed service.**]**

* * * * * * *

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

* * * * * * *

TITLE V—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

* * * * * * *

SEC. 505. (a) IN GENERAL.—(1) * * *

* * * * * * *

(3) **[**A financially responsible person (as defined in section 10910(a)(1) of title 49, United States Code)**]** *(A) A financially responsible person* may apply to the Secretary for financial assistance from funds made available pursuant to section 509(b)(2) of this title.

(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.

* * * * * * *

AUTHORIZATIONS

SEC. 509. (a) * * *

(b)(1) [Repealed.]

[(2) Not more than 5 percent of the funds received by the Secretary of Transportation from amounts appropriated under subsection (a) (excluding funds transferred under paragraph (1) of this subsection) shall be available for the purchase or rehabilitation of railroad lines acquired under section 10910 of title 49, United States Code, except that no such funds shall be available for the purchase or rehabilitation of such a railroad line unless such pur-

chase or rehabilitation is consistent with the rail plan (as defined under section 5 of the Department of Transportation Act) of the State in which such line is located.]

EXEMPTION

SEC. 510. Neither [the provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a), nor] the registration and prospectus delivery requirements of the Securities Act of 1933, nor the provisions of the securities laws of any State, shall be applicable to the issuance and sale of redeemable preference shares by railroads under this title.

* * * * * * *

SECTION 7 OF THE SERVICE CONTRACT ACT OF 1965

SEC. 7. This Act shall not apply to—

(1) * * *

* * * * * * *

(3) any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline [where published traff rates are in effect];

* * * * * * *

SECTION 115 OF THE JOINT RESOLUTION OF DECEMBER 15, 1981

JOINT RESOLUTION Making further continuing appropriations for the fiscal year 1982, and for other purposes.

[SEC. 115. Notwithstanding any other provision of law or of this joint resolution, none of the funds provided in this or any other Act shall hereafter be used by the Interstate Commerce Commission to approve railroad branchline abandonments in the State of North Dakota by the entity generally known as the Burlington Northern Railroad, or its agents or assignees, in excess of a total of 350 miles: *Provided,* That this section shall be in lieu of section 311 (amendment numbered 93) as set forth in the conference report and the joint explanatory statement of the committee of conference on the Department of Transportation and Related Agencies Appropriations Act, 1982 (H.R. 4209), filed in the House of Representative on November 13, 1981 (H. Rept. No. 97–331).]

SECTION 401 OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

MOTOR VEHICLE SAFETY

SEC. 401. (a) * * *

(b)(1) When using, or causing to be used, any vehicle for providing transportation to which this section applies, each agricultural employer, agricultural association, and farm labor contractor shall—

(A) * * *

* * * * * * *

(2)(A) * * *

* * * * * * *

(C) Standards prescribed by the Secretary under subparagraph (A) shall be in addition to, and shall not supersede or modify, any standard under [part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.), or any successor provision of] *part B of* subtitle IV of title 49, United States Code, or regulations issued thereunder, which is independently applicable to transportation to which this section applies. A violation of any such standard shall also constitute a violation under this Act.

* * * * * * *

(3) The level of the insurance required by paragraph (1)(C) shall be at least the amount currently required for common carriers of passengers under [part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.), and any successor provision of] *part B of* subtitle IV of title 49, United States Code, and regulations prescribed thereunder.

* * * * * * *

SECTION 601 OF THE FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT OF 1994

SEC. 601. PREEMPTION OF INTRASTATE TRANSPORTATION OF PROPERTY.

(a) * * *

* * * * * * *

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on January 1, 1995; except that with respect to the State of Hawaii the amendment made by subsection (c) [shall take effect on the last day of the 3-year period beginning on the date of the enactment of this Act.] *shall not take effect as long as section 11501(g)(2) of title 49, United States Code, applies to that State.*

INTERCOASTAL SHIPPING ACT, 1933

AN ACT Amending the Shipping Act, 1916, as amended, for the purpose of further regulating common carriers by water interstate commerce of the United States engaged in transportation by way of the Panama Canal.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That when used in this Act—

[(1) The term "common carrier by water in intercoastal commerce" for the purposes of this Act shall include every common and contract carrier by water engaged in the transportation for hire of passengers or property between one State of the United States and any other State of the United States by way of the Panama Canal.

[(2) The term "general increase in rates" means any change in rates, fares, or charges which will (A) result in an increase in not

less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in an increase in gross revenues of such carrier for the particular trade of not less than 3 per centum.

[(3) The term "general decrease in rates" means any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade or not less than 3 per centum.

[SEC. 2. That every common carrier by water in intercoastal commerce shall file with the Federal Maritime Board and keep open to public inspection schedules showing all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route; and, if a through route has been established, all the rates, fares, and charges for or in connection with transportation between intercoastal points or its own route and points on the route of any other carrier by water. The schedules filed, and kept open to public inspection as aforesaid by any such carrier shall plainly show the places between which passengers and/or freight will be carried, and shall contain the classification of freight and of passenger accommodations in force, and shall also state separately each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part of the aggregate of such aforesaid rates, fares or charges, or the value of the service rendered to the passenger consignor, or consignee, and shall include the terms and conditions of any passenger ticket, bill of lading, contract of affreightment, or other document evidencing the transportation agreement. The terms and conditions as filed with the Federal Maritime Board shall be framed under glass and posted in a conspicuous place on board each vessel that carries passengers where they may be seen by passengers and others at all times. Such carriers in establishing and fixing rates, fares, or charges may make equal rates, fares, or charges for similar service between all ports of origin and all ports of destination, and it shall be unlawful for any such carrier, either directly or indirectly, through the medium of any agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any such carrier from extending service to any publicly owned terminal located on any improvement project authorized by the Congress at the same rates which it charges at its nearest regular port of call. Such schedules shall be plainly printed, and copies shall be kept posted in a public and conspicuous place at every wharf, dock, and office of such carrier where passengers or freight are received for transportation, in such manner that they shall be readily accessible to the public and can be conveniently inspected. In the event that any such schedule includes the terms and conditions of any passenger ticket, bill of lading, contract of affreightment or other document evidencing the transportation agreement, as herein provided, copies of such terms and conditions shall be made available to any shipper, consignee, or passenger upon request. Such terms and conditions may be incorporated by reference in a short form of same

actually issued for the transportation, or in a dock receipt or other document issued in connection therewith, by notice printed on the back of each document that all parties to the contract are bound by the terms and conditions as filed with the Federal Maritime Board and posted, and when so incorporated by reference every carrier and any other person having any interest or duty in respect of such transportation shall be deemed to have such notice thereof as if all such terms and conditions had been set forth in the short form document.

[No change shall be made in the rates, fares, or charges, or classifications, rules, or regulations, which have been filed and posted as required by this section, except by the publication, filing, and posting as aforesaid of a new schedule or schedules which shall become effective not earlier than thirty days after date of posting and filing thereof with the board and such schedule or schedules shall plainly show the changes proposed to be made in the schedule or schedules then in force and the time when the rates, fares, charges, classifications, rules, or regulations as changed are to become effective: *Provided*, That no general increase in rates or general decrease in rates shall take effect before the close of the sixtieth day after the day on which such general increase in rates or general decrease in rates is posted and filed with the Commission: *Provided further*, That the board may, in its discretion and for good cause, allow changes upon less than the period of thirty days or sixty days herein specified: *And provided, further*, That schedules or changes which provide for extension of actual service to additional ports at rates of said carrier already in effect for similar service at the nearest port of call to said additional ports shall become effective immediately upon notice to the board.

[From and after ninety days following enactment hereof no person shall engage in transportation as a common carrier by water in intercoastal commerce unless and until its schedules as provided by this section have been duly and properly filed and posted; nor shall any common carrier by water in intercoastal commerce charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property or for any service in connection therewith than the rates, fares, and/or charges which are specified in its schedules filed with the board and duly posted and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such schedules.

[The board shall by regulations prescribe the form and manner in which the schedules required by this section shall be published, filed, and posted; and the board is authorized to reject any schedule filed with it which is not in consonance with this section and with such regulations. Any schedule so rejected by the board shall be void and its use shall be unlawful.

[Whoever violates any provision of this section shall be subject to a civil penalty of not more than $1,000 for each day such violation continues.

[SEC. 3. (a) Whenever there shall be filed with the board a schedule stating a new individual or joint rate, fare, or charge, or

any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the board shall have, and it is hereby given, authority, either upon protest or upon its own initiative without protest, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice. The Commission shall not order a hearing pursuant to this subsection, on its own motion or upon protest, unless the Commission publishes in the Federal Register the reasons, in detail, why it considers such a hearing to be necessary and the specific issues to be resolved by such hearing purposes of facilitating the administration of this Act, the Commission shall, within one year after the effective date of this sentence, by regulation prescribe guidelines for the determination of what constitutes a just and reasonable rate of return or profit for common carriers by water in intercoastal commerce. After the regulations referred to in the preceding sentence are initially prescribed, the Commission shall from time to time thereafter review such regulations and make such amendments thereto as may be appropriate.

[(b) Pending such hearing and the decision thereon the board, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may, except as provided in subsection (c), from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and eighty days beyond the time when it would otherwise go into effect; and after full hearing whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the board may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period. At any hearing under this paragraph the burden of proof to show that the rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the carrier or carriers. The board shall give preference to the hearing and decision of such questions. Notwithstanding any other provision of law, the Commission shall complete such hearing under this section within sixty days; the initial decision resulting therefrom, if any, shall be submitted in writing to the Commission within one hundred and twenty days; and the Commission shall issue a final decision thereon within one hundred and eighty days. The sixty-day, one hundred and twenty-day, and one hundred and eighty day periods referred to in the preceding sentence shall each begin on the day on which such rate, fare, charge, classification, regulation, or practice first takes effect or, in the case of suspended matter, shall begin on the day on which such matter would have otherwise gone into effect. However, the Commission may, in its discretion and for good cause, extend the time period or suspension period for a period of not more than sixty days, if three or more Commissioners agree to such an extension. If such extension is granted, the Commission shall re-

port in writing to Congress within ten days from the granting of such extension together with—

[(A) a full explanation of the reasons for the extension,

[(B) the issues involved in the matter before the Commission,

[(C) the names of the personnel of the Commission working on such matter, and

[(D) a record of how each Commissioner voted on the extension. If a final decision is not issued by the Commission within the one hundred and eighty day period, or by the end of any extension period, such rate, fare, charge, classification, regulation, or practice shall, for purposes of this section, thereafter be deemed to be just and reasonable. However, if the Commission finds that it is unable to issue a final decision within such period or within such extension due to delays which are directly attributable to the proponent of such rate, charge, classification, regulation, or practice, the Commission may disapprove such rate, fare, charge, classification, regulation, or practice, upon the expiration of such period or extension. This provision shall not preclude any remedies available pursuant to section 22 of the Shipping Act of 1916. Notwithstanding any other provision of law, in providing a hearing for the purposes of this Act, it shall be adequate to provide an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties. Any such conference may be chaired by an individual Commissioner, an administrative law judge, or any designated employee of the Commission.

[(c)(1) Notwithstanding any other provision of this section, the Commission may not suspend—

[(A) any tariff schedule or service which extends to any additional port, actual service at the rates of the carrier involved for similar service already in effect at the nearest port of call to such additional port; or

[(B) the operation of that portion of any changed rate, fare, or charge representing an increase or decrease of 5 per centum or less and filed as part of a general increase in rates or a general decrease in rates, except that the aggregate of such changes exempt from suspension shall not exceed 5 per centum during any period of twelve consecutive months; nothing in this subparagraph shall be construed as establishing a presumption that any increase or decrease in excess of 5 per centum is not just and reasonable, or that any increase or decrease less than 5 per centum is just and reasonable.

[(2) If the Commission finds, as a result of any proceeding under this section with respect to a general increase in rates, that any unsuspended portion of the increase is not just and reasonable, the Commission shall order the carrier involved to refund to any person who was charged on the basis of such general increase an amount equal to that portion thereof found to be not just and reasonable plus interest on such amount computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System, during the period to which the refund applies.

[SEC. 4. Whenever the Commission finds that any rate, fare, charge, classification, tariff, regulation, or practice demanded, charged, collected, or observed by any carrier subject to the provisions of this Act is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge, or a just and reasonable classification, tariff, regulation or practice: *Provided*, That the minimum-rate provision of this section shall not apply to common carriers on the Great Lakes: *Provided further*, That upon such finding of unjustness or unreasonableness in a proceeding instituted by a complainant pursuant to the provisions of section 22 of the Shipping Act, 1916, the Commission shall direct full reparation to the complainant of the difference between the charge collected and the just and reasonable rate, fare, or charge, plus interest on such amount computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System, during the period to which the reparation applies.

[SEC. 5. The provisions of this Act are extended and shall apply to every common carrier by water in interstate commerce, as defined in section 1 of the Shipping Act, 1916, and shall apply to the carriage, storage or handling of property for the United States, State or municipal governments, or for charitable purposes.

[SEC. 7. The provisions of the Shipping Act, 1916, amended, shall in all respects except as amended by this Act, continue to be applicable to every carrier subject to the provisions of this Act.

[SEC. 8. That this Act be cited as the Intercoastal Shipping Act, 1933.]

SHIPPING ACT, 1916

* * * * * * *

[SEC. 3. Notwithstanding part III of the Interstate Commerce Act, as amended (49 U.S.C. 901 et seq.), or any other provision of law, rates and charges for the barging and affreighting of containers and containerized cargo by barge between points in the United States, shall be filed solely with the Federal Maritime Commission in accordance with rules and regulations promulgated by the Commission where (a) the cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States, (b) the transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading, (c) such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of the date of enactment hereof, and (d) such terminal operator is in compliance with the rules and regulations of the Federal Maritime Commission for the operation of such barge service. The terminal operator providing such services shall be subject to the provisions of the Shipping Act, 1916.

[(b) Within one hundred and twenty days after enactment of this Act, the Federal Maritime Commission shall promulgate rules and regulations for the barge operations described in the amendment made by the first section of this Act. Such rules shall provide that the rates charge shall be based upon factors normally considered by a regular commercial operator in the same service.

* * * * * * *

[SEC. 14. That no common carrier by water in interstate commerce shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port—

[First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow a deferred rebate to any shipper. The term "deferred rebate" in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

[Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

[Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

[Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

[Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than $25,000 for each offense.

[SEC. 15. Every common carrier by water in interstate commerce, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or ad-

vantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The Germ "agreement" in this section includes understandings, conferences, and other arrangements, but does not include maritime labor agreements or any provisions of such agreements, unless such provisions provide for an assessment agreement described in the fifth paragraph of this section.

[The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

[The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

[Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the provisions of any regulations the Commission may adopt.

[Assessment agreements, whether part of a collective bargaining agreement or negotiated separately, to the extent they provide for

the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized, shall be deemed approved upon filing with the Commission. The Commission shall thereafter, upon complaint filed within 2 years of the date of filing of the agreement, disapprove, cancel, or modify any such agreement, or charge or assessment pursuant thereto, that it finds, after notice and hearing, to be unjustly discriminatory or unfair as between carriers, shippers, or ports, or to operate to the detriment of the commerce of the United States. The Commission shall issue its final decision in any such complaint proceeding within 1 year of the date of filing of the complaint. To the extent that any assessment or charge is found, in such a complaint proceeding, to be unjustly discriminatory or unfair as between carriers, shippers, or ports, the Commission shall remedy the unjust discrimination or unfairness for the period of time between the filing of the complaint and the final decision by means of assessment adjustments. Such adjustments shall be implemented by prospective credits or debits to future assessments or charges, except in the case of a complainant who has ceased activities subject to the assessment or charge, in which case reparation may be awarded. To the extent that any provision of this paragraph conflicts with the language of section 22 or any other section of this Act, or of the Intercoastal Shipping Act, 1933, the provisions of this paragraph shall control in any matter involving assessment agreements described herein.

[Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," and amendments and Acts supplementary thereto.

[Whoever violates any provision of this section shall be subject to a civil penalty of not more than $1,000 for each day such violation continues: *Provided, however,* That the penalty provisions of this section shall not apply to leases, licenses, assignments, or other agreements of similar character for the use of terminal property or facilities which were entered into before the date of enactment of this Act, and, if continued in effect beyond said date, submitted to the Federal Maritime Commission for approval prior to or within ninety days after the enactment of this Act, unless such leases, licenses, assignments, or other agreements for the use of terminal facilities are disapproved, modified, or canceled by the Commission and are continued in operation without regard to the Commission's action thereon. The Commission shall promptly approve, disapprove, cancel, or modify each such agreement in accordance with the provisions of this section.

[SEC. 16. That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means

to obtain or attempt to obtain transportation by water in interstate commerce, for property at less than the rates or charges which would otherwise be applicable.

[That it shall be unlawful for any common carrier by water in interstate commerce, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly:

[First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description or traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

[Second. To allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

[Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, as is granted to such carrier or other person subject to this Act.

[Whoever violates any provision of this section other than paragraphs First and Third hereof shall be subject to a civil penalty of not more than $25,000 for each such violation.

[Whoever violates paragraphs First and Third hereof shall be guilty of a misdemeanor punishable by a fine of not more than $5,000 for each offense.

[SEC. 17. Every other person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

[Sec. 18. (a) That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

[Every such carrier shall file with the board and keep open to public inspection, in the form and manner and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

[No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after ten days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made; but the board for good cause shown may waive such notice.

[Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

[Sec. 19. That whenever a common carrier by water in interstate commerce reduces its rates on the carriage of any species of freight to or from competitive points below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates unless after hearing the board finds that such proposed increase rests upon changed conditions other than the elimination of said competition.

[Sec. 20 That it shall be unlawful for any common carrier by water in interstate commerce or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment of prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

[Nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States, or of any State, Territory, District, or possession thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers; or to prevent any common carrier by water which is a party to a conference agreement approved pursuant to section 15 of this Act, or any other person subject to this Act, or any receiver, trustee, lessee, agent, or employee of such carrier or person, or any other person authorized by such carrier to receive information, from giving information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with the conference or its member lines or

of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act shall be unlawful.

[SEC. 21. (a) That the Federal Maritime Commission and Secretary of Transportation may require any common carrier by water in interstate commerce, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it or him any periodical or special report or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Commission or Secretary so requires, and shall be furnished in the form and within the time prescribed by the Commission or Secretary. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of $100 for each day of such default.

[Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than $1,000, or imprisonment for not more than one year, or to both such fine and imprisonment.

[(b) The Commission may, to the extent it deems feasible, require any shipper, consignor, consignee, forwarder, broker, or other person subject to this Act, to file a periodic, written certification under oath with the Commission attesting to—

[(1) a policy prohibiting the payment, solicitation, or receipt of any rebate which is unlawful under the provisions of this Act;

[(2) the fact that such policy has been promulgated recently to each owner, officer, employee, and agent thereof;

[(3) the details of the efforts, made, within the company or otherwise to prevent or correct illegal rebating; and

[(4) full cooperation with the Commission in its investigation of illegal rebating or refunds in United States foreign trades, and in its efforts to end such illegal practices.

The Commission may by regulation prescribe the form and content of any certification required under the authority of this subsection. Failure to file any such certification shall result in a civil penalty of not more than $5,000 for each day such violation continues.

[SEC. 22. (a) That any person may file with the board a sworn complaint setting forth any violation of this Act by a common carrier by water in interstate commerce, or other person subject to this Act, and asking reparation for the injury, if any, caused thereby. The board shall furnish a copy of the complaint to such carrier or other person, who shall, within a reasonable time specified by the board satisfy the complaint or answer it in writing. If the complaint is not satisfied the board shall, except as otherwise provided in this Act, investigate it in such manner and by such means, and make such order as it deems proper. The board, if the complaint is filed within two years after the cause of action accrued, may di-

rect the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

[(b) The board, upon its own motion, may in like manner and with the same powers, investigate any violation of this Act.

[SEC. 23. Orders of the Commission relating to any violation of this Act or to any violation of any rule or regulation issued pursuant to this Act shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted of its own motion.

[All orders of the United States Maritime Commission made under this Act, as amended or supplemented, shall continue in force until its further order, or for a specified period of time, as shall be prescribed in the order, unless the same shall be suspended, or modified, or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

[SEC. 24. That the board shall enter of record a written report of every investigation made under this Act in which a hearing has been held, stating its conclusions, decision, and order, and, if reparation is awarded, the findings of fact on which the award is made, and shall furnish a copy of such report to all parties to the investigation.

[The board may publish such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and of the States, Territories, District, and possessions thereof.

[SEC. 25. That the board may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it under this Act. Upon application of any party to a decision or order it may grant a rehearing of the same or any matter determined therein, but no such application for or allowance of a rehearing shall, except by special order of the board, operate as a stay of such order.

[SEC. 27. (a) In all proceedings under section 22 of this Act, depositions, written interrogatories, and discovery procedure shall be available under rules and regulations issued by the Federal Maritime Commission, which rules and regulations shall, to the extent practicable, be in conformity with the rules applicable in civil proceedings in the district courts of the United States. In such proceedings, the commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence, in such manner and to such an extent as the Commission may by rule or regulation require. Attendance of witnesses and the production of books, papers, documents, and other evidence in response to subpoena may be required from any place in the United States at any designated place of hearing, and persons so acting under the direction of the Commission and witnesses shall, unless employees of the Commission, be entitled to the same fees and mileage as in the courts of the United States.

[(b) Obedience to this section shall, on application by the Commission, be enforced as are orders of the Commission.

[SEC. 29. That in case of violation of any order of the Federal Maritime Commission under this Act, the Commission, or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties; and if, after

hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise.

[SEC. 30. That in case of violation of any order of the board under this Act, for the payment of reparation the person to whom such award was made may file in the district court for the district in which such person resides, or in which is located any office of the carrier or other person to whom the order was directed, or in which is located any point of call on a regular route operated by the carrier, or in any court of general jurisdiction of a State, Territory, District, or possession of the United States having jurisdiction of the parties, a petition or suit setting forth briefly the causes for which he claims damages and the order of the board in the premises.

[In the district court the findings and order of the board shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor shall he be liable for costs of any subsequent stage of the proceedings unless they accrue upon his appeal. If a petitioner in a district court finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the cost of the suit.

[All parties in whose favor the Board has made an award of reparation by a single order may be joined as plaintiffs, and all other parties to such order may be joined as defendants, in a single suit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against any such defendant and not found in that district may be made in any district in which is located any office of, or point of call on a regular route operated by, such defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

[No petition or suit for the enforcement of an order for the payment of reparation shall be maintained unless filed within one year from the date of the order.

[SEC. 31. That the venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the board under this Act, shall, except as herein otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties.

[SEC. 32. (a) That whoever violates any provision of sections 14 thorough 21 of this Act, except where a different penalty is provided, shall be subject to a civil penalty not to exceed $5,000 for each such violation.

[(b) Whoever violates any provision of any other section of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by a fine not to exceed $5,000.

[(c) Whoever violates any order, rule, or regulation of the Federal Maritime Commission made or issued in the exercise of its powers, duties, or functions, under this Act, shall be subject to a civil penalty of not more than $1,000 for each day such violation continues.

[(d) No penalty shall be imposed on any person for conspiracy after August 29, 1972: (1) to rebate or refund in violation of the ini-

tial paragraph or paragraph Second of section 16, or under section 18(b)(3) of this Act; or (2) to defraud the Commission by concealment of such rebates or refunds in any manner.

[(e) Notwithstanding any other provision of law, the Commission shall have authority to assess or compromise all civil penalties provided in this Act: *Provided, however,* That, in order to assess such penalties a formal proceeding under section 22 of this Act shall be commenced within five years from the date when the violation occurred.

[SEC. 33. That this Act shall not be construed to affect the power of jurisdiction of the Interstate Commerce Commission, nor to confer upon the board concurrent power or jurisdiction over any matter within the power or jurisdiction of such commission; nor shall this Act be construed to apply to intrastate commerce.]

* * * * * * *

[SEC. 35. The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

[The Commission may attach conditions to any such exemptions and may, by order, revoke any such exemption.

[No order or rule of exemption or revocation of exemption shall be issued unless opportunity for hearing has been afforded interested persons.]

* * * * * * *

[SEC. 43. The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Act.

[SEC. 45. The provisions of this Act and of the Intercoastal Shipping Act, 1933, shall not apply to maritime labor agreements and all provisions of such agreements except to the extent that such provisions provide for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized. Notwithstanding the preceding sentence, nothing in this section shall be construed as providing an exemption from the provisions of this Act or of the Intercoastal Shipping Act, 1933, for any rates, charges, regulations, or practices of a common carrier by water in interstate commerce or other person subject to this Act which are required to be set forth in a tariff, whether or not such rates, charges, regulations, or practices arise out of, or are otherwise related to a maritime labor agreement.]

* * * * * * *

SECTION 402 OF THE DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION ACT, 1982

[SEC. 402. Notwithstanding any other provision of law or of this Act, none of the funds provided in this or any other Act shall hereafter be used by the Interstate Commerce Commission to approve railroad branchline adandonments in the State of North Dakota by the entity generally known as the Burlington Northern Railroad, or its agents or assignees, in excees of a total of 350 miles: *Provided,* That this section shau be in lieu of section 311 (amendment numbered 93) as set forth in the conference report and the joint explanatory statement of the committee of conference on the Department of Transportation and Related Agencies Appropriations Act, 1982 (H.R. 4209), filed in the House of Representatives on November 13, 1981 (H.Rept. No. 97–331.]

MINORITY VIEWS: H.R. 2539, THE "ICC TERMINATION ACT OF 1995"

We are including separate views to clarify that although we voted against reporting the bill, we intend to work cooperatively with the majority to develop a Floor amendment to resolve open issues in a manner which will enable us to support the bill when it is considered by the House.

The bill reported by the Committee is clearly a work-in progress.

When the Committee met to consider the bill, considerable work had been done to develop a bipartisan bill, but some important issues had not been resolved. The decision to proceed to a Committee mark-up was made because the appropriations process had limited Fiscal 1996 funding for ICC and the agency may have to shut down on December 5. If ICC transfer legislation is not passed by this date, ICC's authority to regulate transportation industries will remain on the books, but there will be no functioning agency to make the necessary decisions. The result will be that the industries regulated by the ICC will be unable to take actions which require prior ICC authorization.

The Committee Chairman has made it clear that he will work with us to address the concerns which led us to vote against reporting the admittedly-preliminary bill considered by the Committee. We will cooperate fully in this process and we are hopeful that the result will be a bill which we can support.

ROBERT A. BORSKI.
WILLIAM O. LIPINSKI.
PETER A. DEFAZIO.
FRANK MASCARA.
JAMES L. OBERSTAR.
JAMES A. TRAFICANT.
CORRINE BROWN.
BARBARA-ROSE COLLINS.

ADDITIONAL VIEWS

During Committee consideration of H.R. 2539 I voted to report the bill to the House for two reasons.

First, as the Ranking Democrat on the Subcommittee on Surface Transportation I had no major objections to the motor carrier provisions of the legislation. These provisions were formulated in a bipartisan fashion, and addressed the majority of concerns I had advanced in these areas. In my view, under the circumstances we have formulated a bill which will cause the least disruption to the motor carrier industry and its employees as a result of the elimination of the ICC.

Second, while I continue to have reservations over the manner by which this bill addresses the concerns of captive rail shippers, the amendments offered by the Chairman during Committee consideration made some progress in this area. Further, I have received reasonable assurances that my remaining captive shipper concerns will be taken into consideration as we proceed to bring this legislation to the House floor.

With this stated, however, I strongly object to the manner by which this bill treats railroad labor. My vote to report H.R. 2539 should in no way be construed as representing my position on these matters. In fact, throughout my tenure in the Congress, I have maintained a strong position in support of the working men and women of this country, their right to bargain collectively, and the need to keep in place those provisions of federal law which seek to safeguard their employment and benefits. As further consideration is given to this legislation, I will work to see that the justifiable concerns being advanced by rail labor are addressed.

NICK RAHALL.