AK.
RAILROAD
STAGGERS
RAIL ACT
of 1980

FOR INFORMATION:

OFFICE OF THE GENERAL COUNSEL.
Section of Legislation

SUMMARY OF THE "STAGGERS RAIL ACT OF 1980"

January 8, 1981

MEMORANDUM TO THE COMMISSION
AND HEADS OF BUREAUS AND OFFICES:

As you know, on October 14, 1980, President Carter signed into law the "Staggers Rail Act of 1980." Attached for your information is a section-by-section summary of the provisions of this act. The purpose of this document is to provide a general overview of the legislation which is both short enough to be useful and detailed enough to be reasonably comprehensive. Of course, a survey of this kind cannot hope to resolve the many complexities of this legislation in any great detail.

By way of introduction, I am also including a capsule summary of the legislative history of the act.

Additional copies of this summary are available from this office (X 57231).

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Attachment

SUMMARY OF LEGISLATIVE HISTORY

SENATE

March 27, 1979	-	Senator Cannon (by request) introduces S. 796, the "Railroad Deregulation Act of 1979" (the Administration Bill).
	-	Several hearings from April 12, 1979, through July 6, 1979. S. 796 never reported by Subcommittee on Surface Transportation.
October 29, 1979	-	Senators Cannon, Long, and Packwood introduce S. 1946, the "Railroad Transportation Policy Act of 1979."
		Several hearings held beginning November 7, 1979, (ICC testimony November 7).
December 7, 1979	-	Reported by Committee on Commerce, Science, and Transportation (S. Rep. No. 96-470).
February 22, 1980	-	Hearing held on proposed Long amendment (ICC testified).
April 1, 1980	-	Passed by Senate.
April 15, 1980	-	Referred to House Committee on Interstate and Foreign Commerce.

House

April 24, 1979	-	ICC testifies before the Subcommittee on Transportation and Commerce of the House Interstate and Foreign Commerce Committee on the subject of regulatory reform of the railroad industry.
June 21, 1979	-	Congressman Staggers (by request) introduces H.R. 4570, the "Railroad Deregulation Act of 1979" (the Administration bill). A series of hearings were held from July 2-November 1, 1979 by the Subcommittee on Transportation and Commerce.
February 14, 1980	-	Congressman Florio and Madigan release a working draft of railroad deregulation legislation.

April 29, 1980	-	Subcommittee on Transportation and Commerce reported a clean bill to the Interstate and Foreign Commerce Committee.
May 1, 1980	-	Subcommittee reported bill is introduced--H.R. 7235, the "Rail Act of 1980."
May 16, 1980	-	H.R. 7235 reported by the Interstate and Foreign Commerce Committee (H.R. Rep. No. 96-1035).
June 30, 1980	-	H.R. 7235 considered on House floor-general debate.
July 2, 1980	-	Continued House floor consideration.
July 24, 1980	-	Continued House floor consideration. With the passage of Cong. Eckhardt's amendment (placing greater restrictions on maximum rates), the floor managers removed the bill from further consideration.
August 28, 1980	-	Hearing held before Subcommittee on Oversight and Investigations of House Commerce Committee on proposed cost recovery percentage provision in H.R. 7235 (ICC testified).
September 5, 1980	-	House floor consideration. Compromise amendment was introduced by Congressman Staggers and debated.
September 9, 1980	-	House passed H.R. 7235, the "Staggers Rail Act of 1980." Subsequently, this passage was vacated and S. 1946 was passed after being amended to contain the language of H.R. 7235.
September 26, 1980	-	Conference report filed (H.R. Rep. No. 96-1430).
September 30, 1980	-	Conference report passed the House and Senate.
October 14, 1980	-	Signed by the President (P.L. 96-448).

SECTION-BY-SECTION ANALYSIS OF THE SUBSTANTIVE PROVISIONS OF S. 1946

TITLE II - RAILROAD RATES AND INTER-CARRIER PRACTICES

Section 201 - Regulation of Railroad Rates

This section adds new Section 10701a to the Act. Basically it provides that, in the absence of market dominance, a carrier may establish any rate it desires so long as it contributes to the going concern value. If the carrier has market dominance, the rate must be reasonable.

Section 201 also sets forth the burden of proof obligations for proceedings to determine the reasonableness of a rate. The shipper has the burden if: (1) the rate is authorized under new Section 10707a (Zone of Rate Flexibility), and results in a revenue-variable cost percentage that is less than 20 percentage points above the cost percentage applicable that year or 190 percent, whichever is less, or (2) the rate is not within (1) but the Commission does not investigate under Section 10707. The carrier has the burden if: (1) the rate is beyond the zone of rate flexibility; or (2) the rate results in a revenue-variable cost percentage equal to or greater than 20 percentage points above the revenue-variable cost percentage applicable in that year under new Section 10709(d) (Determination of Market Dominance) or greater than 190 percent, whichever is less; and the Commission begins an investigation. Thus, the burden is on the shipper in all instances unless the Commission begins an investigation, and the Commission is precluded from an investigation (see new Section 10707a(e)(2) added by Sec-

tion 203 of the Staggers Act) unless certain criteria are met. In a complaint proceeding, the burden remains on the shipper to prove that a rate is unreasonable, regardless of the revenue-variable cost percentage.

In determining whether a rate is reasonable, the Commission is required to recognize the policy that rail carriers are to earn adequate revenues (see Section 10704(a)(2), as amended by Section 205(b) of the Staggers Act).

Section 201 further provides that a rate may not be established below a reasonable minimum. A rate that does not contribute to going concern value is presumed unreasonable, while a rate that does so contribute is conclusively presumed not to be below a reasonable minimum. Further, a rate that equals or exceeds variable cost is conclusively presumed to contribute to the going concern value. The Commission has 90 days to take final action on a complaint alleging that a rate is too low, and if it finds a rate too low, shall order the rate raised to the minimum level required by this section. The complainant in such a proceeding has the burden of proof. The Commission may not include in variable costs an expense that does not vary directly with the level of service provided under the proposed rate.

Section 202 - Determination of Market Dominance

This section adds a new subsection to Section 10709 of the Act. Basically, it establishes a schedule of reve-

nue-variable cost percentages to be used in determining whether a carrier has market dominance over the transportation to which a challenged rate applies. The revenue to variable cost schedule is:

(1) 160 percent until September 30, 1981:

(2) 165 percent from October 1, 1981, until September 30, 1982;

(3) 170 percent from October 1, 1982, until September 30, 1983;

(4) 175 percent or the cost recovery percentage (defined below), whichever is less, from October 1, 1983, until September 30, 1984; and

(5) the cost recovery percentage during each 12-month period after October 1, 1984.

However, this section also provides that after October 1, 1983, the cost recovery percentage shall in no event be less than a revenue-variable cost percentage of 170 percent or more than 180 percent. Thus, the range for this threshold jurisdictional finding will be from no less than 170 percent to 180 percent of the revenue-variable cost ratio after October 1, 1983.

A finding that a rate results in a revenue-variable cost ratio equal to or greater than the percentage listed above does not establish a presumption that there is market dominance or that the rate is unreasonably high. It merely establishes a jurisdictional threshold, and the Commission

must still determine if there is market dominance and, if so, whether the rate is nonetheless reasonable. The definition of market dominance in Section 10709(a) of the Act is not changed by this provision. The conference report (House Report No. 96-1430, 96th Cong., 2d. Sess., September 29, 1980) specifies at page 88:

> The definition of market dominance under existing law has not been altered by the substitute, and it is not intended that there be any change in the meaning of the term, nor is any change intended in the Commission's authority to determine market dominance and reasonableness concurrently. However, since other parts of the Conference substitute provide additional rate freedom for rail carriers beyond those found in present law or under existing or proposed Commission regulations, the Commission must revise its market dominance regulations.

Thus, the Commission must determine that a rate is above the threshold and that the carrier has market dominance before it addresses the question of reasonableness, although this can be done concurrently.

Section 202 also provides certain definitions. "Fixed and variable cost" means all cost incurred by the carrier, but limits the return on equity capital to a rate equal to the embedded cost of debt. The "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 this 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.

The Commission is required, within 180 days of the effective date of the Act, and annually thereafter, to determine the cost recovery percentage. Also, as mentioned, this percentage must always be in the range of 170 to 180 percent of revenue to variable cost after October 1, 1983.

In determining a particular revenue to variable cost percentage, the Commission is to use the carrier's unadjusted costs from Rail Form A, with any adjustments specified by the Commission. (See Section 10705a(m)(1) of the Act, added by Section 217 of the Staggers Act.) A shipper may rebut evidence establishing these costs by evidence of such type as the Commission prescribes.

Section 203 - Zone of Rail Carrier Rate Flexibility

This section adds new Section 10707a to the Act. Basically, it provides a formula which allows carriers to increase any rate to reflect increases in the Index of Railroad Costs. (Carriers are allowed to raise a rate to the "adjusted base rate," to be defined below). Subject to certain restrictions, it also allows carriers to raise rates by six percent a year for four years above the adjusted base

rate (subject to a maximum of 18 percent), and by four percent annually after that. It also provides for the carry-over of the six percent increase into subsequent years but not of the four percent increase. Also, a carrier earning adequate revenues cannot use the four percent zone to increase a single-line rate.

The Commission is required to attempt to prescribe rules with respect to joint rates and carriers earning adequate revenues. Generally, rates up to the adjusted base rates are not subject to challenge while rate increases within the four and six percent zones are subject to complaint proceedings. The conference report, at page 93, states:

> "The language of subsection (b) [allowing increases up to the adjusted base rate] makes it clear that rate increases which do not exceed the adjusted base rate may not be found by the Commission to exceed a maximum rate level. The reference to rate increases under subsections (c) and (d) of this section [the six and four percent zones] is not intended to suggest that increases under those subsections are presumed to be reasonable. The reasonableness of such rate increases shall be determined under the same standards of maximum reasonableness applicable to any other rate or rate increase."

Also, during the floor debate on this subject, (Congressional Record of September 30, 1980, at page H10082) the following exchange took place:

> **"Mr. Florio.** The gentleman [Mr. Eckhardt] is correct, those flexibility rate zones can be challenged upon complaint.
>
> **Mr. Eckhardt.** They are challengeable and they are not presumed to be reasonable within that range, is that correct?

Mr. Florio. Nor are they presumed to be unreasonable.

Mr. Eckhardt. That is correct. No presumption in either direction is connection with these rates?

Mr. Florio. The gentleman is correct."

With regard to definitions, Section 203 specifies that "base rate' means, with respect to the transportation of a particular commodity: (1) until October 1, 1982, the rate in effect on October 1, 1980, (2) for the next two years, the rate in effect October 1, 1982, and (3) for the next five years, and for each subsequent five-year period, the rate in effect on the first day of the applicable five-year period. Thus, the base rate will, after four years, be changed every five years. If there is no rate in effect on the above dates, the base rate will be the rate established by the carrier (divided by the rail cost adjustment factor) unless that rate is found unreasonable by the Commission, in which case the base rate will be the rate authorized by the Commission.

The Commission is required, on a quarterly basis, to publish a rail cost adjustment factor. This factor is a fraction, the numerator of which is the latest published Index of Railroad Costs, and the denominator of which is the same index for the fourth quarter of 1980 (or 1982, or every fifth year thereafter, as appropriate). Thus, the rail cost adjustment factor for the fourth quarter of 1980 will be 1/1.

As mentioned, a carrier may increase any rate so long as the increased rate is not greater than the adjusted base rate plus the six and four percent zone. However, a carrier may not increase a rate pursuant to this provision to the extent that the cost increases to the carrier due to inflation are recovered by general increases (Section 10706) or inflation-based increases (Section 10712 of the Act, as added by Section 206 of the Staggers Act). It is not specified how the Commission is to determine that a cost increase is "due to inflation."

Section 203 also limits Commission jurisdiction over rate increases which are within the zones of flexibility. The Commission may not suspend a rate within the zones, and may only investigate in certain circumstances.[1/] However, a complaint may be filed alleging that a rate increase within the zones violates the Act. In any such complaint proceeding challenging a rate increase within the six percent zone (but not the four percent zone) which results in a rate which the Commission is not authorized to investigate on its

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1/ The Commission may investigate a rate increase within the zones on its own initiative only if the increase results in a revenue-variable cost percentage that is equal to or greater than: (1) 20 percentage points above the Commission's jurisdictional threshold, or (2) 190 percent. Thus, after October 1, 1982, the Commission could investigate any rate increase which results in a revenue-variable cost ratio above 190 percent.

own initiative (see footnote, previous page), the Commission must, in determining reasonableness, consider whether the carrier has attained adequate revenues. The Commission must give regard to the policy of preventing a carrier with adequate revenues from obtaining excessive profits, and also to the policy of bringing to an adequate level the revenues of carriers not having an adequate revenue level.

In determining whether or not to investigate a rate increase in those instances where it can investigate, the Commission must set forth its reasoning, and give due consideration to: (1) the amount of traffic moving at revenues which do not contribute to going concern value; (2) the amount of traffic which contributes only marginally to fixed costs; and (3) the impact of the proposed rate on the attainment of national energy goals and the rail transportation policy. This provision does not modify the nonreviewability of the Commission's determination.

This section also specifies three considerations, among others, the Commission must address in determining the reasonableness of a rate. (Apparently this refers to any rate, and not simply ones filed pursuant to this provision.) Those considerations are:

> "(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 deter-

mine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

This section also provides that a rate increase exceeding the adjusted base rate and/or the zones does not establish a presumption either way with regard to market dominance or reasonableness.

Finally, this section also contains the "San Antonio" provision, which limits coal rates to the municipally-owned utility in San Antonio, Texas.

Section 204 - Transportation of Recyclable Materials

This section adds a new subsection to Section 10731 of the Act. It requires that within 90 days after the effective date of the Staggers Act, all carriers must reduce and thereafter maintain rates for recyclables (other than iron or steel) at revenue-to-variable cost ratios that are equal to or less than the average revenue-to-variable cost ratio that the carriers would be required to realize to cover total operating expenses. Total operating expenses include depreciation and a reasonable and economic profit or return (or both) on capital employed in the business sufficient to attract and retain capital. The Commission has jurisdiction to issue all orders necessary to enforce this subsection.

Section 205 - Rate Regulation Proceedings; Adequate Revenues

This section requires the Commission, within 230 days of the effective date of the Staggers Act, to complete a proceeding to determine whether, and to what extent, product

competition should be considered in proceedings to determine the reasonableness of rates. Product competition is defined. For the purposes of this section, imported coal is not to be taken into account when determining whether coal is available from another source. Nothing in this section is to be construed to modify the Commission's standards for determining market dominance or rate reasonableness.

This section also modifies Section 10704 of the Act. It requires the Commission to conclude a proceeding to define adequate revenue levels, and to determine on an annual basis which carriers are earning adequate revenues. There is some dispute as to whether the Commission must rely solely upon a rate of return on net investment equal to the cost of capital. Mr. Madigan (at page H10082 of the Congressional Record of September 30, 1980) stated: "A rate of return adequate to attract capital is the only economically rational revenue adequacy standard. This return is equal to the cost of capital." Further, (at page H10083 of the Congressional Record of September 30, 1980) he specified:

> "The conferees, however, do not intend that the Commission attempt to second guess the market's decision as to what return is needed to attract capital or to second guess the market's determination of the railroads' capital needs.... there is no basis for any conclusion except that railroads should not (sic) earn a return equal to the cost of capital on all of their capital."

Mr. Eckhardt, however, (at page E4857 of the Congressional Record of October 15, 1980) specified:

> "I do not believe that Mr. Madigan's remarks reflect the position of the conference on the subject of adequate revenues. Any suggestion that

> the conferees intended that the Commission must change its standards from what they are today or that they must rely solely or primarily upon a rate of return on net investment equal to the cost of capital is unfounded."

Mr. Eckhardt also appended a letter from Senator Long to the effect that Mr. Madigan's statements were specifically considered and rejected by the conference members, and that the Staggers Act does not require the Commission to develop new standards for determining revenue adequacy, but merely to conclude the process of revising its standards. Based on this, it would appear that the Commission is not required to set a revenue adequacy standard based on a return equal to the cost of capital.

Section 206 - Inflation-Based Rate Increases

This section adds a new Section 10712 to the Act, effective January 1, 1981. It permits (but does not require) the Commission, on a quarterly basis, to prescribe a percentage rate increase or rate index for rail carriers in order to compensate for inflationary cost increases. This percentage rate increase or index may be applicable on an industry-wide, territory-wide, or carrier-by-carrier basis. Any such index may permit rate increases within a specified range to allow carriers to recover a total revenue increase necessary to compensate for inflationary cost increases.

If the Commission prescribes such an index, each carrier must, within 60 days, notify the Commission of any rate or group of rates it intends to be excluded from the application of the index. The Conference Report, at

page 98, states that such an index may not be necessary, since carriers are free to recover inflation on individual rates without challenge. It further refers to the policy discouraging automatic pass-through of inflation through increases of general applicability.

Section 207 - Investigation And Suspension Of Rates

This section modifies Section 10707 of the Act. As modified, the Commission is required to complete a proceeding within five months if a suspension has occurred, and may take an additional three months if Congress is notified it is necessary. If the Commission does not reach a timely decision, the rate goes into effect.

The Commission may not use its suspension power unless: (1) it is substantially likely protestant will prevail on the merits; (2) without suspension, the proposed rate will cause substantial injury to the protestant; and (3) because of the peculiar economic circumstances of protestant, the refund provisions (discussed below) do not protect the protestant.

If the Commission does not suspend, it must require the carrier to account for all amounts received under the increase. If a part of the increase is ultimately deemed unreasonable, the carrier must refund that portion, plus interest, to shippers who paid it. If a rate is suspended, and later found reasonable, the shipper must pay the difference, plus interest. The Commission is required, by

rule, to establish standards permitting a carrier to waive the collection of amounts due under this provision if the amounts are not significant.

Section 208 - Contracts

This section adds a new section to the Act specifically authorizing carriers to enter into contracts with one or more shippers. Contracts must be filed with the Commission, along with a summary containing such nonconfidential information as the Commission prescribes. The essential terms of the contract are to be made available to the general public in tariff format. Short deadlines are established for Commission approval or disapproval of a contract.

Shippers and ports are allowed to protest a contract. However, the Act allows shippers and ports to protest and the Commission to disapprove contracts only on limited grounds; i.e., (1) that the contract will prevent the carrier from fulfilling its common carrier obligation to a complaining shipper, and (2) that the contract will result in unreasonable discrimination against a port. The Commission may not disapprove a contract on other grounds, such as that the rate is unreasonably high or low, or that the carrier has discriminated against some other shipper by not offering it the same contract terms.2/

2/ Shippers of agricultural commodities, however, may challenge a contract on the grounds that (1) "the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services...under similar conditions...;" or (2) "the proposed

The new section gives the Commission 60 days from the filing of the contract to approve or disapprove it. If not disapproved in that time period, it becomes effective. Once effective, the contract may not thereafter be challenged by anyone.

Several issues relating to this provision were raised in G.C. Memo No. 80-367, as supplemented by G.C. Memo No. 80-394. These issues and the discussion thereof will not be reiterated at this time.

Finally, the Commission is required to establish a railroad contract rate advisory service to, among other things, provide advice to the Commission and interested parties about contracts.

Section 209 - Demand Sensitive Rates

This section repeals the demand sensitive rate provision of the Act, Section 10727. The Conference Report specifies at page 101:

> The conferees direct the Commission to explore alternative methods of improving car utilization and making railroad prices and services more responsive to market conditions instead of artificial regulatory restraints. However, the Commission is on specific notice not to contravene the policy set out by Congress which is clearly to prevent demand-sensitive rates by any means to apply to agricultural commodities.

2/ (continued) contract constitutes a destructive competitive practice..." Section 208(d)(2)(B).

Also, Senator Kassebaum stated (126 Cong. Rec. S 14011, 96th Cong, 2nd Sess; September 30, 1980):

> "Demand sensitive rates are specifically repealed in the conference substitute, and strong conference report language is included making it crystal clear that it is the intent of Congress that the ICC is not to try to impose a "demand sensitive" rate on agricultural shipments. The conferees included this language in recognition of the fact that such rates are totally inappropriate in the sort of market which is the driving factor in shipments of grain and other agricultural commodities."

Chairman Gaskins sent a letter on September 16, 1980, to Senator Exon which stated: "In my view, repeal of this section [Section 10727] will lead the Commission to repeal its existing regulations regarding demand-sensitive rates and to refuse to initiate new rulemakings on this subject."

Section 210 - Phaseout of Capital Incentive Rates

This section repeals the capital incentive rate provision of the Act (Section 10729). However, it specifies that any rate established pursuant to that provision entered into prior to the effective date of the Staggers Act should remain in effect for up to five years, unless the parties agree otherwise.

Section 211 - Permissive Limited Liability Rates

This section adds a new subsection to Section 10730 of the Act. It allows carriers to establish rates under which the liability of the carrier is limited to a value pre-established by a written declaration of the shipper or by a written agreement between the shipper and the carrier.

Such an agreement may provide for a specified deductible for any claim against the carrier for damage or delay.

This section also specifies in what locations court cases may be brought for damage claims against a carrier.

This section also provides that within a year the Attorney General and the ICC must independently investigate whether rail carriers should be subject to the Carmack amendments (Section 11707). Both are to submit a report to Congress recommending appropriate legislative action. A list of issues to be addressed in this report is specified.

Section 212 - Rate Discrimination

This amendment modifies Section 10741 of the Act by striking out existing subsection (e) and adding two new subsections. These subsections provide that differences between rates of rail carriers do not violate Section 10741 if such differences result from different services provided by the carriers. It also provides that Section 10741 does not apply to: (1) contracts; (2) surcharges; (3) separate rates for distinct rail services; (4) rates applicable to different routes; or (5) business entertainment expenses. However, provisions (2), (3), and (4) do not apply with respect to rate relationships between ports or within the same port.

The Conference Report, at page 104, specifies that the conferees expect the Commission to exercise its remaining power under Section 10741 only where it is needed to prevent

abuses of market power where discrimination cannot be justified by differences in demand for services of costs. It also specifies that the reference to separate rates for distinct rail services is not intended to affect the Wichita doctrine (Atchison, T & S.F. Ry. Co. v. Wichita Board of Trade, 412 U.S. 800 (1973)). The Wichita doctrine, in essence, requires that a carrier, if it attempts to charge extra for an accessorial service that was previously included in a line haul rate, must either reduce the line haul rate or justify keeping it at the existing level.

Section 213 - Exemptions

This section modifies Section 10505 of the Act to expand the Commission's exemption authority. It provides that the Commission shall exempt a person, class of persons, or a transaction or service from regulation when the Commission finds that the application of a provision of the Act: (1) is not necessary to carry out the transportation policy, and (2) either the transaction or service is of limited scope or the provision is not needed to protect shippers from the abuse of market power. However, no exemption can relieve a carrier from the liability provisions of Section 11707.

The Commission may exempt transportation that is provided by a rail carrier as part of a continuous intermodal movement. However, the ICC may not authorize intermodal ownership that is otherwise prohibited, or relieve a carrier of labor protection obligations.

The Conference Report (at page 105) specifies that this provision permits exemptions whenever regulation is not needed to prevent abuses of market power, regardless of the presence of effective competition. It also states that the conferees expect that the Commission will pursue partial and complete exemptions from remaining regulation. Further, it specifies that the conferees expect that as many as possible of the Commission's restrictions on changes in prices and services will be removed and that the ICC will adopt a policy of reviewing carrier actions after the fact to correct abuses of power.

Section 214 - Intrastate Rates

This section provides that a State authority may only exercise jurisdiction over intrastate transportation by an interstate carrier exclusively in accordance with the provisions of the Interstate Commerce Act. Each State authority is required to submit, within 120 days, the standards and procedures it uses to exercise its jurisdiction. Within 90 days, the ICC must determine if these standards and procedures are proper, and, if so, so certify. Existing procedures and standards are deemed to be certified until the Commission acts. The certification is good for a five-year period, after which a re-filing is required.

A State authority may not exercise authority over general rate increases, inflation-based rate increases, or fuel adjustment surcharges approved by the Commission. (Please

see G.C. Memo No. 80-410 with regard to pending intrastate general rate increases). A State authority's decision on other matters may be appealed to the Commission, which must act within 30 days. Finally, this provision provides that the jurisdiction of the Commission over transportation by rail carriers and the remedies provided in Title 49 with respect to rates, classifications, rules, and practices of rail carriers is exclusive. No State law or Federal or State common law remedies are available.

Section 215 - Business Entertainment Expenses

This section provides that business solicitation or entertainment expenses incurred by rail carriers do not constitute illegal rebates or discrimination, if these expenses would be legal when incurred by a non-Commission regulated entity. In addition, it provides that the provision applies to any permissible business expense incurred prior to the effective date of the Staggers Act, other than expenses on which a penalty has already been paid pursuant to Section 10761 of the Act.

Section 216 - Efficient Marketing

This section permits tariffs increasing rates to be effective upon 20 days' notice and tariffs reducing rates to become effective upon 10 days' notice. It does not modify existing law which permits the effective date of tariffs to be reduced by the Commission upon cause shown.

Section 217 - Compensatory Joint Rate Relief

This section adds a new and extremely long and complex Section 10705a to the Act. This section provides standards and procedures for surcharging an existing rate or for canceling the application of a joint rate to a particular route. In general, it provides that a surcharging carrier will be able to get revenues equal to or in excess of 110 percent of its variable costs for providing a particular service. Special provisions are included for the protection of Class III carriers, and in certain instances connecting carriers and/or shippers may challenge the application of a surcharge.

Subsection (a) authorizes a carrier to apply a surcharge increasing or decreasing the through charge applicable to any joint rate, without the concurrence of other carriers party to the joint rate. However, a carrier earning adequate revenues may not apply a surcharge to a line which carried more than 3,000,000 gross ton miles of traffic per mile in the previous year. The surcharge must be applied in equal dollar amounts to all routes for the movement under the joint rate in which the surcharging carrier participates, and to all single line routes between the same end points.

A connecting carrier may cancel the application of a surcharge by showing that the surcharging carrier's existing revenues over the route are equal to or in excess of 110

percent of its variable costs, or by putting into effect a new division or new rate which provides the surcharging carrier 110 percent of its variable cost. Alternatively, the Commission could prescribe a new, lesser surcharge giving the surcharging carrier revenues equal to or greater than 110 percent of its variable costs.

The Commission may also cancel the application of a surcharge if a shipper shows that it has no competitive alternative and that the carrier's revenues with the surcharge exceed 110 percent of its variable costs.

A carrier may not apply a surcharge unless it has concurred in all general increases for the previous year. A carrier may only apply a surcharge under this provision once a year, and the provision is in effect for only three years unless extended for one more year by the Commission (see Section (p)(1)).

Subsection (b) provides that a carrier not earning adequate revenues may apply a surcharge applicable to traffic on any line that carried less than 3,000,000 gross ton miles of traffic per mile the previous year. If the carrier does have adequate revenues, this figure is 1,000,000 gross ton miles of traffic per mile. No concurrence of another carrier is necessary, and the surcharge may be applied in differing amounts on different movements. However, a shipper may not be required to bear more than a reasonable proportion (as determined by the Commission) of reasonably expected costs of continuing service.

A carrier may apply a surcharge under this subsection only if the existing rate does not provide revenues adequate to cover 110 percent of the carrier's variable cost plus 100 percent of its reasonably expected costs of continuing to operate the line. The Commission is required to define reasonably expected costs, which are to include all costs necessary to sustain service on the line. However, the conference report (at page 112) specifies "...the conferees intend that such surcharges may not be imposed in a manner which would require shippers to pay for extraordinary occurrence (i.e. bridge washouts, landslides) in a short period of time."

Thus, under this provision, carriers are allowed to apply surcharges to light density lines which cover both the carrier's variable costs and its reasonably expected costs. A shipper may petition the Commission to cancel the surcharge if it shows that the rate with the surcharge provides revenues which exceed these costs. The shipper is rebuttably presumed to have met this burden if it shows that the carrier's revenue to variable cost percentage is equal to or greater than the revenue to variable cost percentage in effect for that year under Section 10709(d) (jurisdictional threshold) of the Act. A carrier may rebut this presumption by showing that its reasonably expected costs exceed that percentage.

The Commission may reduce the amount of the surcharge to a level which allows revenues to cover variable costs plus reasonably expected costs. It can also reallocate the way the surcharge is applied to the traffic of the various shippers on the line. The Commission's jurisdiction to suspend surcharges applied to light density lines is limited.

Section 217 also allows a carrier to cancel the application of a joint rate to a through route without the concurrence of a connecting carrier in certain circumstances. It may not cancel if the connecting carrier or a shipper who has no competitive alternative shows that the existing rate produces revenues that are equal to or greater than: (A) 110 percent of its variable cost; or (B) such lesser percent of the carrier's variable cost as it earns over a competing through route to which appliction of the joint rate has not been cancelled, or over a competing single line route.

If a complaining party can not show (A) or (B), the Commission can only preclude cancellation if: (1) a new rate or division is established which increases the cancelling carrier's revenues to the level established under (A) or (B) (whichever is less); or (2) it imposes a surcharge which provides the cancelling carrier with revenues equal to or greater than 110 percent of its variable costs for providing the service. Nothing in this subsection may be construed to limit the Commission's authority to prescribe

joint rates which provide a carrier with revenues equal to or greater than 110 percent of variable costs.

Subsection (d) provides that (except with regard to a through route with a Class III carrier) any increase or decrease in revenue resulting from a surcharge or cancellation of a joint rate is only to be borne by or accrue to the surcharging or cancelling carrier. If a Class III carrier participates in a through route upon which a surcharge is imposed, the Class III carrier is to share in any revenues generated in excess of 110 percent of the surcharging carrier's variable cost. The Class III carrier's share is to be based on the existing division of the joint rate.

Subsection (e) provides that, when a carrier puts into effect a new rate or division in order to prevent a surcharge or cancellation from taking effect over a particular route, the surcharging or cancelling carriers can require similar concessions on other competing through routes. However, a carrier is not required to agree to a new division or a new rate which would:

(A) reduce its revenues to less than 110 percent of its variable costs or such lesser percent it earns over a competing through route with respect to which the carrier has agreed to a new rate or division;

(B) increase the surcharging or cancelling carrier's share to an amount in excess of 110 percent of its variable costs;

(C) reduce the carrier's share by a dollar amount in excess of the greatest dollar reduction the carrier has agreed to on a competing through route; or

(D) reduce the carrier's share of the total through charges to an amount in excess of the carrier's pro rata charge (based on established divisions for movements over the route) of the increase of the surcharging or cancelling carrier's share of the total through charges for movements over the route.

Subsection (f) provides that a carrier applying a surcharge or cancelling a joint rate must file a tariff with the Commission. It may not become effective for 45 days.

Subsection (g) provides that, with certain exceptions, the Commission may not remedy a surcharge or cancellation found to violate another section of Title 49 in a way which would require a carrier to provide service at less than 110 percent of variable cost (or reasonably expected costs in the case of a light density line). It also provides that any rail rate to which a surcharge is applied is subject to Sections 10701(a) and 10707 of the Act, and that a surcharge constitutes a rate increase for the purposes of those sections. Only the carrier proposing a surcharge is required to defend the surcharge, and the reasonableness of the surcharge is to be determined without regard to revenue received by other carriers party to the joint rate.

Subsection (h) requires the Commission, within five days of the surcharge filing, to make available to interested parties the Commission's determination of variable costs and revenues for the surcharged route.

Subsection (i) requires the Commission to investigate the application of a surcharge or a cancellation if a Class III carrier protests and makes a prima facie case that the surcharge or cancellation will have an adverse effect on competition. If the Commission finds the surcharge or cancellation is or is intended to be anticompetitive, it is to order its recission. However, the order cannot require a carrier to provide service under a rate which provides revenues of less than 110 percent of variable costs unless the Commission determines that the public interest so requires.

Subsection (j) provides the standards under which a Class III carrier may protest the application of a surcharge or cancellation. The Commission may, after an investigation, prescribe a lesser surcharge or a different division, but cannot lower revenues to less than 110 percent of variable costs unless the public interest so requires. The Commission has 30 days to act on a protest.

Subsection (k) permits a Class III carrier to complain to the Commission that a surcharge or cancellation creates unreasonable differences in existing rates. The Commission must investigate such a complaint, and within 30 days take whatever actions it feels are required to eliminate the differences in rates. However, no action by the Commission may

require a carrier to provide service which provides a revenue to variable cost ratio less than that provided under the surcharged joint rate or less than 110 percent, whichever is greater, unless the public interest so dictates. If the Commission considers requiring a return of less than 110 percent (based on Rail Form A costs), the carrier may prove its actual costs for the movement by other evidence.

Subsection (l) requires the Commission, upon protest by a Class II or III carrier, to prescribe a new compensatory through route when the application of a joint rate to a through route has been cancelled.

Subsection (m) sets forth the method for determining variable costs for the purpose of this section.

Subsection (n) provides that the authority to impose surcharges expires in three years, but allows the Commission to extend this for one year. Surcharges made within this time period will continue to be lawful.

The Commission is also required to classify all rail carriers on the basis of revenues. It is also required in its annual report to include a report on surcharges and cancellations by Conrail. Finally, it is required to submit, within two years, a report to Congress on the effectiveness of the surcharge provision.

Section 218 - Expedited Division of Revenues Proceeding

This section requires the Commission to complete all evidentiary proceedings to adjust the division of joint

rates within nine months if the proceeding is brought on complaint, or 18 months if initiated by the Commission. The Commission must take final action by the 180th day after completion of evidentiary proceedings. For a three year period, this expedited divisions provision does not apply to Class III carriers.

The Conference Report, at page 113, states:

> "The conferees intend that the Commission will modify its regulations governing divisions proceedings to insure that prefiling requirements do not frustrate the purpose of the Congress to expedite divisions proceedings as much as possible. The conferees also expect the Commission to examine closely alternative means of dividing revenues among carriers in a manner which might better reflect market conditions than the crude, across the board divisions which now apply regardless of the specific economic conditions of the carriers involved and the markets they serve."

Section 219 - Rate Bureaus

This section modifies the activities a rate bureau may permit its members to engage in if it is to be approved by the Commission and its members are to be immune from the antitrust laws. Carriers may not discuss, vote, or agree on single-line rates. The Commission may allow such discussions for general rate increases or broad tariff changes only if it finds that the implementation of this limitation is not feasible in those instances. A carrier may not discuss or vote on rates related to a particular interline movement unless the carrier "practicably participates" in that movement. The Commission must define "practicably participate." After January 1, 1984, or earlier if the

Commission so determines, no carrier may discuss or vote on a joint line rate where there are two or more routes between the same end points, except with a carrier which forms part of a particular single route. Until January 1, 1984, carriers may discuss general rate increases to cover inflationary cost increases for joint rates and broad tariff changes, if the rate bureau has a special procedure allowing shippers to comment prior to the filing of the tariff with the Commission. If the Commission finds that the implementation of this latter provision is not feasible, it may delay or suspend implementation in whole or in part.

In any proceeding in which it is alleged that a carrier has violated this provision, proof of a conspiracy may not be inferred from evidence that two or more carriers acted together with respect to an interline rate and that a party to such action took similar action with respect to a rate on another route. Rate bureaus are required to keep transcripts or sound recordings of all meetings, to record all votes, and to submit to the Commission the transcripts or sound recordings and votes to the Commission.

The Commission may not take any action with respect to the elimination of general rate increases or decreases prior to April 1, 1982.

Section 220 - Long and Short Haul Transportation

This section repeals Section 10726(c) of the Act, which deals with situations where a rail carrier reduces rates due to competition with a water carrier. The original House

proposal would have gone much farther, limiting the provisions of existing law to rates applicable to grains, soybeans, rice or cotton.

Section 221 - Railroad Entry

This section modifies Section 10901 of the Act. It provides that if a carrier has been issued a certificate to construct or extend a line, no other rail carrier may block the construction by refusing to permit the carrier to cross its property. The construction and subsequent operation must not unreasonably interfere with the operation of the crossed line, and the owner of the crossed line must be compensated. If the carriers cannot agree on compensation, the Commission may set it. Employee protection is established, at the discretion of the Commission.

Section 222 - Service During Periods Of Peak Demand

This section provides that a carrier shall not be found to have violated its common carrier obligations if it fulfills its commitments under contracts before responding to reasonable requests for service.

Section 223 - Reciprocal Switching

This section allows the Commission to require carriers to enter into reciprocal switching agreements. The carriers are to establish compensation and conditions, but if they cannot agree, the Commission may set them. The Commission may also provide for employee protection.

Section 224 - Car Service Compensation

This section repeals the incentive per diem provision of the Act, Section 11122(b)(2). This section also adds a new paragraph to Section 10706(a) of the Act, which requires that when two or more shippers enter into an agreement to discuss what they propose to charge rail carriers for use of rolling stock owned or leased by the shippers, they must get Commission approval of the agreement. Once approved, the shippers may act under the agreement without fear of the antitrust laws. If the shippers and carriers cannot agree upon a charge for the use of shipper owned railing stock, they may apply to the Commission to set the charge.

Section 225 - Car Utilization

This section adds a new Section 10734 to the Act which allows carriers to establish tariffs containing premium charges for special services not provided in any tariff otherwise applicable to the movement. This is designed to encourage the more efficient use of freight cars. It allows carriers to provide a more specialized service to shippers who choose to pay a premium rate.

Section 226 - Car Service Orders For Exigent Circumstances

This section limits the Commission's authority to issue emergency car service orders under Section 11123 of the Act. These orders can only be issued where there is a shortage of equipment or congestion of traffic which creates an emergency situation resulting in substantial adverse

effects on rail service in the entire country or a substantial region of the country. The Commission may issue an order for only 30 days, but can extend it if the full Commission, after a hearing, certifies that a transportation emergency exists. There apparently is no limit on how long an extension may last.

Section 227 - Employee Protection

This section provides for employee protection, as set forth in Section 11347 of the Act, to be imposed in transactions involving transfers to or the operation of or over a debtor's lines by another entity under Section 11172(b) of the Bankruptcy Act of 1978. The Conference Report, at page 120, states that this puts employees of rail carriers which enter bankruptcy after the effective date of the Bankruptcy Act in the same position as employees of carriers that entered bankruptcy prior to the Bankruptcy Act, with regard to employee protection.

Section 228 - Mergers And Other Transactions

This section sets up new standards to be used by the Commission in merger proceedings that do not involve two Class I railroads. The Commission is to approve such transactions unless it finds that: (1) as a result of the transaction, there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. It also provides that a rail carrier and an

affected shipper may seek approval from the ICC to provide motor carrier service prior or subsequent to rail service to serve inadequately served shippers located on a railroad other than the applicant carrier.

Section 228 also modifies Section 11345 of the Act to expedite time limits for mergers. Also, the Commission is required to consider whether a proposed transaction will have an adverse effect on competition on rail carriers in the affected region.

Section 229 - Savings Provisions

Subsection (a) of this section provides that any rate for a carrier in effect on the effective date of the Rail Act can be challenged within 180 days of enactment in a complaint alleging that the carrier had market dominance and that the rate is not reasonable under new Section 10701(a). The Conference Report, at page 121, specifies:

> "The conferees do not intend this right to be construed as creating any presumption as to the reasonableness of the rates subject to challenge. The purpose of this provision is to give affected parties a final opportunity to review the reasonableness of existing rates before their opportunity to challenge these rates is curtailed. "

Subsection (b) provides that any such rate not challenged within the 180 days, or which is challenged but found lawful, is deemed to be lawful and may not thereafter be challenged.

Subsection (c) provides that the savings provision does not apply to any rate under which the volume of traffic

moved during the 12 month period immediately preceding the effective date did not exceed 500 net tons, where the rate has increased tenfold within the three year period preceding the bringing of a challenge to the reasonableness of the rate. This provision was apparently intended to deal with the problem of paper rates: the problem is that carriers have many rates on file which are rarely used, and shippers would not be able to challenge all rates within the 180 day period established by this provision after which unchallenged rates (or those challenged but not found reasonable) are deemed reasonable and not challengeable. There is no legislative history on this subsection, which first appeared as an amendment to the bill in the Congressional Record of September 5, 1980.

Subsection (d) specifies that the burden of proof in any proceeding under this section is on the complainant.

TITLE III - RAILROAD COST DETERMINATIONS

Section 301 - Uniform Accounting System

This section makes Section 11142 of the Act, which requires the Commission to prescribe a uniform cost and revenue and reporting system, applicable only to non-rail carriers.

Section 302 - Railroad Cost Accounting

This section adds a new Subchapter IV to Chapter III of the Act. Section references hereinafter are to the new subchapter.

Section 11161 establishes for three years a Railroad Accounting Principles Board (Board) consisting of seven members and chaired by the Comptroller General of the United States. The Comptroller is to appoint the other members of the Board from among specified representatives (accountants, economists, major rail shippers, minor rail shippers, the rail industry, and the ICC).

Section 11162 requires the Board, within two years, to establish principles governing the determination of economically accurate railroad costs directly and indirectly associated with particular movements of goods. These principles are to govern the determination of all railroad costs for specific regulatory proceedings. The considerations the Board is to take into acount in determining the principles are listed. The conference report, at page 122, specifies: "...the primary purpose of the *** Board is to promulgate

sound principles to govern the determination of railroad costs rather than detailed standards."

Section 11163 requires the Commission to promulgate rules to implement and enforce the principles developed by this Board. At least every fifth year thereafter, the Commission must review and modify its rules, as necessary. The conference report, at page 123, specifies:

> "[The Conference] stresses that the principles promulgated by the Board and the rules promulgated by the Commission are to emphasize the degree of economic accuracy needed for regulatory purposes and not merely the accumulation of more detailed, but not necessarily more accurate, accounting information."

Section 11164 requires each rail carrier, within 180 days, to file with the Commission a request for preliminary certification of its cost accounting system. The Commission will so certify if the carrier's system complies with its existing accounting standards. After promulgation of rules by the Commission implementing the Board's principles, the carriers have nine months to file for final certification. The Commission has 90 days (or longer, if necessary) to grant or deny certification. If denied, the carrier must re-file within 90 days. If again denied, the Commission is to prescribe a system. Once certified, a system remains valid until the Commission promulgates new rules.

Section 11165 requires carriers to make relevant cost data available to shippers and other interested parties.

Section 11166 allows the Commission to promulgate reasonable rules to obtain expense and revenue information for regulatory purposes. Such rules are to be promulgated in accordance with the cost accounting principles established by the Board. (Please see G.C. Memo No. 80-358 on this issue.)

Section 11168 authorizes $1 million per year to carry out the provisions of this subchapter.

Section 303 - Civil Penalties for Violations of Accounting Principles Provisions

This section provides that a carrier failing to obtain final certification of its accounting system is to be fined not less than $50,000. Any party to a proceeding who knowingly discloses confidential data made available by a rail carrier may be fined up to $50,000.

TITLE IV RAILROAD MODERNIZATION ASSISTANCE

Section 401 - Feeder Railroad Development Program

This section adds new Section 10910 to the Act. Its purpose appears to be to provide shipper groups and government agencies an alternative to inadequate rail service and to preserve feeder lines by requiring a carrier in certain circumstances to sell a line to a financially responsible person, at a price not less than the constitutional minimum value. Before such a sale, the Commission must first find that the present or future public convenience and necessity requires or permits the abandonment or discontinuance of the line, or that the transportation over a particular line is inadequate.

Subsection (a) defines "financially responsible person" and "railroad line" for the purposes of this section. A "financially responsible person" includes a government agency, but not a Class I or Class II carrier. A "railroad line" means, for three years, a line of railroad which carried less than 3,000,000 gross ton miles of traffic per year in the previous year. After three years, it includes any line of railroad. In essence, then, the provisions of this section apply only to light density lines for three years, and thereafter to any rail line.

Subsection (b) allows the Commission, in certain circumstances, to require a carrier to sell a line to a financially responsible person at a price not less than the

constitutional minimum value.3/ To do so, the Commission must find that: (A) the public convenience and necessity require or permit the rule or a line has been placed on a system diagram map but no abandonment application has been filed, and (B) an application has been filed to purchase the line.

Subsection (c) lists the five findings the Commission must make before it may determine the public convenience and necessity requires or permits the sale of a line under Subsection (b). These findings are that: (1) the carrier refuses to provide adequate service; (2) the service provided is inadequate; (3) the sale will not have a significantly adverse financial effect on the carrier; (4) the sale will not have an adverse effect on the overall operations of the carrier, and (5) the sale will be likely to result in improved service. The Commission must affirm the existence of each of these facts before it may require a sale. The burden of proof is on the party seeking to buy the line.

Subsection (d) requires the Commission to require the selling carrier to provide trackage rights for access to the acquired line. The buyer must pay reasonable compensation for the trackage rights.

3/ The constitutional minimum value is presumed, under new Section 10910(b)(2), to be not less than the net liquidation value of the line or the going concern value, whichever is greater, not including the cost of providing labor protection payments.

Subsection (e) specifies that the Commission is, to the extent practicable, to require the use of the employees who normally would have worked in connection with a sold line.

Subsection (f) requires that in the case of a sale of a light density line the Commission must, upon petition, require the establishment of reasonable joint rates and divisions over the line.

Subsection (g) allows any person operating a line acquired under this section to be exempt from regulation except with regard to transportation under joint rates. However, the provision only applies to a line of railroad abandoned during the 18-month period prior to enactment of the Staggers Act.

Subsection (h) provides a right of first refusal to a selling carrier under this section, if the purchaser later decides to sell the line.

Subsection (i) permits a person operating a line acquired under this section to determine preconditions, such as payment of a subsidy by a shipper, in order to obtain service over the line.

Subsection (j) requires the Commission to impose labor protection conditions for any line sold under this section.

Subsection (k) requires the Commission, within 60 days, to prescribe regulations and procedures to implement this section.

Section 402 - Abandonment

This section expedites abandonment proceedings by specifically setting forth time periods within which the Commission must act upon abandonment applications, depending upon the complexity of and opposition to the application. Basically, it provides: (1) if not protested, the Commission shall authorize the abandonment within 45 days of filing, to be effective 75 days after filing; (2) if protested, the Commission has 45 days after filing to decide if an investigation is needed; (3) if not investigated, the Commission has 75 days after filing to decide the case; (4) if an abandonment is to be authorized without an investigation, the Commission must issue the certificate within 90 days of filing, to be effective 120 days after filing; (5) if investigated, the investigation must be completed within 135 days of filing, and an initial decision issued within 165 days of filing to become a final decision in 30 days if not appealed; (6) if a decision is appealed, a final decision must be issued within 255 days of filing; and (7) the Commission must, within 15 days of a final decision, issue a certificate permitting the abandonment within 75 days of the date of the final decision. Thus, the maximum time from filing to the effective date of an abandonment is 330 days. (This is the "worst case"--an investigated application the decision upon which is appealed and the application ultimately granted with an effective date of 75 days.)

The Commission may stay the effective date of a certificate pursuant to amended Section 10905, dealing with subsidy or purchase offers.

The burden of proof in an abandonment proceeding is on the party seeking the abandonment.

This section also modifies Section 10905 of the Act. Basically, it requires any carrier which has filed for abandonment to provide information to any party considering financial assistance--an estimate of an annual subsidy and minimum purchase price, a report on the line's physical condition, and traffic and revenue data. Any person may offer to pay the subsidy or purchase the line, and the offer must be filed with the carrier and with the Commission. If the offer is less than the carrier's estimate, the offer must explain the disparity.

If the Commission determines that a financially responsible person has offered financial assistance to enable rail transportation to be continued over the line and it is likely the assistance would cover the operating loss or pay for the purchase of the line, it must postpone issuance of the abandonment certificate. If the parties cannot agree on an offer, they may request the Commission to set the terms of the agreement. If no agreement is reached by the parties within 30 days and neither requests the Commission to set the terms, the Commission must immediately issue the abandonment certificate. If the Commission is asked to set the

terms, its decision is binding on both parties, except that the shipper has 10 days to renege.

A purchaser of a line under this provision may not transfer or discontinue service on the line for two years. Also, the purchaser may not transfer the line, except to the carrier from which it was purchased, for five years.

Section 403 - Conversion of Abandonment Right-Of-Way

This section, which amends Section 809(d) of the 4R Act, authorizes $10 million to be used over the next three years, for the purchase of abandoned railroad rights-of-way. However, any grant money can only be up to 80 percent of the total cost of a project.

Section 404 - Extension of Redeemable Preference Share Financing

This section extends the existing redeemable preference share program, established by the 4R Act, until September 30, 1982.

Section 405 - Financing

This section authorizes an additional $700 million in Section 505 of the 4R Act funds. Not more than $200 hundred million of this is to be transferred to USRA for use by Conrail to reduce its workforce.

This section also allows the Secretary of DOT to provide financial assistance to employee-shipper groups formed pursuant to a plan for the purchase or rehabilitation of railroad lines. However, only 20 percent of the total funds authorized under Section 505 of the 4R Act may be used for this purpose. Also, a financially responsible prson may

apply to the Secretary for financial assistance for the purchase or rehabilitation of railroad lines to be acquired under new Section 10910 of the Act (as added by Section 401 of the Staggers Act).

Section 406 - Transaction Assistance

This section provides that financial assistance is to be available to purchase properties of the Milwaukee Road located in Montana for rail banking. Although the term "rail banking" is not defined, it apparently means that rail lines would not be torn up, and the right of way utilized in some new manner, but would be retained for use in future rail operations.

Section 407 - Electrification Loan Guarantees

This section amends Section 211(i) of the 3R Act to make available to railroads in addition to Conrail loan guarantees for the purpose of electrifying high density main lines. It also allows the Secretary to guarantee obligations of Conrail and other railroads in the region in reorganization for making capital improvements to coal export facilities.

Section 408 - Amendment to the Regional Rail Reorganization Act

This section raises the amount authorized to be loaned to railroads in the region to $7.5 million, and extends USRA's loan authority to December 31, 1981.

Section 409 - Federal Assistance Report

This section requires DOT to make a report to Congress within 90 days of the end of each fiscal year listing the Federal assistance provided to the rail industry that year.

TITLE V - CONRAIL TITLE V LABOR PROTECTION

Section 501 - Monthly Displacement Allowance

This section amends Section 505(b) of the 3R Act by establishing four new formulas for monthly displacement allowances for Conrail employees. These charges were necessary "...to eliminate expensive inequities in the current formulas." (Conf. Report, at page 131)

These four formulas are as follows:

1. Non-operating employees - Except for maintenance of way employees (covered in (2)), non-operating employees will receive a hourly guarantee based upon the rate of pay of the position they held on September 1, 1979, increased to reflect subsequent general wage increases. Also, if the employee gets a higher rated position, the guarantee will be raised to the level for that position. If the employee is required to take a lower rated position, he or she will still receive the original guaranteed wage. If the employee is deprived altogether of employment, he or she will be paid the guaranteed hourly rate based on normally scheduled hours, without overtime.

2. Maintenance-of-way employees - The maintenance-of-way guarantee is based on average monthly compensation received in 1974, adjusted to reflect subsequent general wage increases. The displacement allowance is the the difference between the straight-line earnings and

80 percent of the average monthly compensation. Thus, the employee is guaranteed on a monthly basis 80 percent of the 1974 average monthly compensation, adjusted for subsequent general wage increases. At the end of each calendar year, total straight-time compensation and monthly displacement allowance payments are calculated and compared to the employee's average monthly monthly compensation multiplied by 12. Adjustments are then made to ensure that the total annual compensation is equal to the total annual compensation in 1974, plus general wage increases.

3. Operating employees - these employees (i.e., train and engine service employees) retain their current monthly guarantee, with two modifications. First, average 1977 earnings will be calculated for each classification of operating employees, plus increases due to subsequent general wage increases. This sum will constitute a maximum monthly guarantee. Employees whose current monthly guarantee exceeds this maximum will have their guarantee reduced to the maximum. Second, a monthly calculation will be made in accordance with the calculation described above for maintenance-of-way employees. If a protected employee's earnings are less than the guarantee in any month, 75 percent of the difference will be paid. At the end of the year, a comparison of guarantee and actual earnings on an annual basis

will be made, to determine if an additional payment is necessary to achieve the total annual guarantee.

4. Non-contract employees and employees who have been transferred - There is no change with regard to non-contract employees (basically, the salaried personnel). Transferred employees retain their previous guarantee.

Two other changes are made in this section. First, in addition to all unemployment compensation benefits and railroad earnings being set off against the employee's monthly displacement allowance (as under previous law), all outside earnings of protected employees deprived of employment must now be set off against the allowance. (Section (b)(7)). Second, Section (b)(10) calls for employees deprived of employment and the employer to agree on a procedure through which the employees will report their non-rail earnings and unemployment compensation in order that they may be set-off against monthly displacement allowances.

Section 502 - Duration of Monthly Displacement Allowances

This section modifies Section 505(e) of the 3R Act. It retains the basic premise--protection until age 65 if the employee has five years of service, and, if less than five, protection for the amount of time in service--but restricts payments under two circumstances.

First, an employee's monthly displacement allowance would be suspended for the period the employee does not work for reasons beyond the control of the employer, such as strikes, floods, or snowstorms. Second, it normally requires a protected employee to claim an allowance within three months of entitlement. This is intended to eliminate bookkeeping problems caused by late claims.

Section 503 - Training and Transfer

This section modifies Section 505 of the 3R Act in several ways. First, the power to transfer unemployed protected employees is extended to employers besides Conrail who have employees protected by Section 505. However, an employee of Amtrak may not be required to transfer outside his or her seniority district.

Second, new training and transfer provisions are applied to unemployeed protected employees in the marine crafts and unemployed Penn Truck Lines, Inc. employees. Training expenses would be paid for by Conrail or such other employer. It also contains a "multiple-offer" provision, which allows Conrail to make simultaneous offers to no more than four employees at a time. Those contacted employees who are junior to the least senior employee who accepts the vacancy will be furloughed or severed.

Section 504 - Payment, Audit and Report

This section modifies Section 509 of the 3R Act. It increases the amount of funds authorized to be appropriated

under Title V of the 3R Act by $255 million, to a new authorization level of $485 million. Of the new $255 million, no more than $180 million may be used as reimbursement for monthly displacement allowances. Upon the exhaustion of the $485 million authorization, Conrail and other operators are still responsible for such items as the allowances, but they will no longer be reimbursed by the Railroad Retirement Board. Such sums as necessary for the Secretary of DOT to provide for administrative expenses of the Board are also authorized to be appropriated.

In addition, USRA is directed to conduct a program audit of the payment of benefits under Title V, and evaluate the effectiveness of Title V in providing a reasonable level of protection to employees while allowing Conrail to improve management. The Association is also required to transmit an annual detailed report of its periodic program audit and evaluation to the Congress and the President within 90 days of the end of each fiscal year.

Section 505 - Railroad Hiring

This section adds a new Section 510 to the 3R Act. This new section basically provides that a protected employee of Conrail who is separated or furloughed from Conrail (other than for cause) has the first right of hire by any other rail carrier regulated by the Commission. This right would not apply to an employee who is found to be less qual-

ified than other applicants, nor would it apply to a vacancy covered by an affirmative action plan.

Section 506 - Single Collective-Bargaining Agreement

This section modifies Section 504(d) of the 3R Act. It is intended to clarify the Congressional intent that Conrail and the various unions negotiate a single agreement for each class or craft, rather than allowing the continuation of regional distinctions in treatment among members of the same class or craft. Crafts of classes are to be certified systemwide, and negotiations conducted on a similar basis.

Section 507 - Employee Protection Payments

This section provides that until the effective date of the Staggers Act, Conrail and other covered employers were to continue to make payments to employees pursuant to the provisions in effect on January 1, 1979. October 1, 1980, thus, was the date the new provisions became effective.

Section 508 - Technical Amendments

This section makes several technical and conforming changes to the 3R Act. None of these appears to have significant implications.

TITLE VI - EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

Section 601 - Expedited Supplemental Transactions Proposals

This section adds a new subsection to Section 305 of the 3R Act. It requires the Secretary of DOT, within 240 days after the effective date and after comments, to determine whether to propose a supplemental transaction for the transfer of all rail properties of Conrail in Connecticut and Rhode Island to another carrier in the region. If the Secretary determines that: (A) the proposed transferee railroad is financially and operationally capable of assuming operations; (B) the proposed transfer will help meet the rail needs of Connecticut and Rhode Island; and (C) the proposed transfer is consistent with the goals of the 3R Act, the Secretary shall develop a proposal for the transaction. After USRA, the Commission, and the subject States are allowed to comment on this proposal, the Secretary is to petition the special court for an order to carry out the proposal.

The Secretary is to establish a fair and equitable price for the property to be transferred. The special court, if it determines that the transaction is generally in the public interest, is to issue orders implementing the plan.

A new employment agreement would be entered into between the parties to the transfer and affected employees.

Other supplemental transactions are also allowed under this section.

TITLE VII - MISCELLANEOUS PROVISIONS

Section 701 - Rock Island and Milwaukee Railroad Amendments

This section amends the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) (Rock Island Act) and the Milwaukee Restructuring Act (45 U.S.C. 901 et seq.) (Milwaukee Act). It provides that any appeal from any decision with regard to the constitutionality of the Rock Island Act or the Milwaukee Act made by the respective courts shall be taken to the United States Court of Appeals for the Seventh Circuit. If the appeal on constitutionality involves Sections 106 or 110 of the Rock Island Act or Sections 9 or 15 of the Milwaukee Act, (dealing with employee protection claims), the court is to determine the appeals in a consolidated proceeding and render a decision in less than 60 days from the last appeal.

Section 701 also clarifies the Rock Island Act and the Milwaukee Act by stating affirmatively that nothing in these Acts limits the right of any person to bring an action under the Tucker Act (28 U.S.C. 1491). This provision is intended to remedy the concerns expressed by the courts over the availability of such a remedy.

This section also provides for a new schedule for the negiotiation of an employee protection agreement between the Rock Island and the labor organizations. These parties are given five days after enactment of the Staggers Act to reach agreement. If they fail to do so, the matter is to be immediately submitted to the Commission. The Commission then

has 10 days to impose a fair and equitable arrangement for employee protection, unless the parties by then have reached agreement. "Fair and equitable" means no less protective than as established by the Milwaukee Act.

If an arrangement is imposed, the bankruptcy court must immediately authorize and direct the parties to implement this arrangement. An order by the Commission imposing an arrangement, or an order of the court directing implementation, may be appealed within five days to the U.S. Court of Appeals for the Seventh Circuit, which must decide such appeal within 60 days.

Benefits and allowances under this arrangement are to be paid by the Rock Island, and are to be treated as administrative expenses of the estate of the Rock Island Railroad.

This section also adds a new subsection to Section 7 of the Milwaukee Act which provides that all obligations to the United States incurred pursuant to that section by the Milwaukee or its trustee are to be waived and cancelled when the Milwaukee is reorganized or substantially all of the Milwaukee is purchased. "Substantially all" shall be considered having been purchased when more than 50 percent of the Milwaukee has been purchased or more than 50 percent of Milwaukee employees have gotten jobs with other carriers. This section is intended to remedy the situation created by the Milwaukee Act which subordinated certain obligations to

the United States to the creditors, but not to the stockholders. This section will eliminate this gap by forgiving the subordinated obligation when the 50 percent provisions are reached.

In addition, additional funds are provided for transaction assistance and for the purchase of abandoned lines by non-rail carrier entities of the Rock Island and Milwaukee, and for rail banking of Milwaukee lines in Montana.

Section 702 - Loan Guarantees

This section provides that not later than 75 days after the issuance of a final environmental impact statement with respect to a loan application, the Secretary must take final action on any application for loan guarantees (under Section 511 of the 4R Act) to be used in connection with joint ownership, construction, or rehabilitation of any facilities for a second rail carrier to serve the Powder River Basin in Wyoming and Montana. The Secretary is to attempt to minimize harm to any agricultural land in this area and shall require private land crossings for agricultural owners where necessary. Special judicial review provisions are established for any actions taken by the Secretary.

Section 703 - Conrail Studies and Emergency Funding

This section requires USRA and Conrail to each submit a report to Congress analyzing the effect of different funding levels by the Government on Conrail, rail service, the economy, and other carriers. The reports are to specify which

lines of Conrail would be abandoned, retained, or transferred under the different funding scenarios. Each report must also contain recommendations for future funding and for legislative changes. In general, a thorough analysis of Conrail, its structure, alternatives, and future is required.

The Commission is required to submit a report to Congress on the reports of Conrail and USRA. Conrail must also submit a report to Congress on the benefits to it of the provisions of the Staggers Act, along with its projections for changes in its rail structure and employee arrangements.

Emergency funding for Conrail of $329 million is provided for fiscal year 1981, if the Finance Committee of the Board of Directors of USRA determines that Conrail has taken appropriate action to eliminate losses on light density lines and other lines that are unprofitable.

Section 704 - USRA Authorization of Appropriations

This section provides a one-year authorization of $30 million for fiscal year 1981.

Section 705 - Feeder Line Rehabilitation Study

This section requires the Secretary of Transportation and the Secretary of the Treasury to submit jointly to Congress, within nine months, a report on the anticipated effect of providing an exemption from taxation for obligations incurred in connection with the rehabilitation of railroad feeder lines.

Section 706 - Effect on Pending Matters

This section provides that proposals docketed with rate bureaus prior to the effective date of the Staggers Act which ultimately become the subject of a proceeding before the Commission are to be conducted under the law prior to enactment of the Staggers Act. (Please see G.C. Memo No. 80-410 on this subject.)

Section 707 - Construction of Amendments

This section provides that the amendments made by the Staggers Act should not be construed to modify the existing law with respect to competition and coordination as it affected the relationships between water carriers and rail carriers.

Section 708 - Surplus Property

This section makes Conrail eligible to borrow excess equipment from the Department of the Army. However, it may only do so in the interest of public safety.

Section 709 - Study of Alaska Railroad Rules

This section requires, within six months, the Commission to complete a study to determine whether certain rates charged by the Alaska Railroad would, if such rates were entered into after enactment of the Staggers Act, have violated Section 10701 a(c)(1) of the Act.

Section 710 - Effective Dates

The provisions of the Rail Act generally take effect on October 1, 1980. However:

(1) Section 206 takes effect on January 1, 1981;

(2) Section 218(b) takes effect on October 1, 1983; and

(3) Section 701 takes effect on date of enactment.

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LESSER

ICC CHAIRMAN UNVEILS IMPLEMENTATION PLAN FOR NEW RAIL ACT; PROMISES QUICK ACTION

Interstate Commerce Commission Chairman Darius Gaskins today announced a comprehensive program for ICC implementation of the Staggers Rail Act of 1980 signed yesterday by President Carter.

Describing the legislation as "an important step forward giving railroads the pricing freedom necessary to earn adequate revenues and in expanding competition in the transportation industry," Gaskins said the ICC "is prepared to implement the new legislation quickly and in the spirit in which it was enacted."

The ICC Chairman disclosed that the Commission, in accord with its new mandate from the Congress, plans to propose more than 20 rules within the next 45 days--some of which would repeal existing regulations. The ICC also will begin to prepare five reports required to be submitted to the Congress during the next two years.

Highlights of the legislation and a list of Commission actions to be taken in the next 45 days follow below.

CONTRACT RATES

Since December of 1978, the Commission has been actively fostering contract ratemaking as an alternative to costly and time-consuming litigation for setting rail rates. Under the previous statute, there was some remaining doubt as to the legal status of such contracts. The Staggers Rail Act of 1980 clearly legalizes and encourages such contracts.

RATE BUREAUS

The Staggers Rail Act provides a new environment for rate setting by railroads. No longer will carriers be able to discuss single-line rates with their competitors. Joint-line discussions will be limited to railroads that actually carry traffic associated with specific movements. The scope of permissible rate bureau activity will be increasingly narrowed over three years unless the Commission finds that to be infeasible.

(more)

RATE FLEXIBILITY

The Staggers Rail Act provides new jurisdictional limits for railroad rate setting. The Commission will no longer be able to question the reasonableness of carrier rates which are set at or below a level of 160 percent of variable costs in the first year. That threshold will increase to 165, 170, and 175 in subsequent years. After October 1, 1984, the threshold will fluctuate between 170 and 180 percent depending on a measurement of carrier earnings performance called the cost recovery percentage. In addition, carriers are given a zone of reasonableness of 6 percent each year for the next four years, with a maximum of 18 percent over the four-year period. The Commission is also required to establish an inflation index which would allow carriers to raise their rates on at least a quarterly basis to keep up with cost increases.

EXEMPTION FROM REGULATION

The exemption section of the Act gives the Commission clear direction to search out and eliminate outmoded regulations which are unnecessary to protect shippers from abuse of market power. The exemption provision includes a specific authorization to eliminate regulation of intermodal transportation.

SMALL COMMUNITIES RAIL SERVICE PRESERVATION

Several provisions of the Staggers Rail Act are directed to preserve or improve rail service on branch lines. The first would allow the Commission to require continued rail service on lines authorized for abandonment if a financially responsible person offers to provide the necessary financial assistance. The Commission may also require sale of a line to interested small carriers, shippers or community groups if the railroad has announced a desire to abandon the lines or if the shippers are receiving inadequate service. Finally, the Act creates several different mechanisms by which rail carriers can extend their services by using motor carriers to shippers and communities not receiving adequate rail and motor service.

PROCEDURAL CHANGES

The Congress has directed the Commission to speed up significantly the regulatory process by cutting down the time available to process rate changes, abandonments and proposed financial transactions, such as minor mergers, sales of rail lines, trackage rights agreements and stock purchases.

(more)

ICC ACTIONS TO BE TAKEN IN FIRST 45 DAYS FOLLOWING
ENACTMENT OF STAGGERS RAIL ACT OF 1980

Rulemakings

RATES

1. Notice of proposed rulemaking (NPR) setting out methodology for determining cost recovery percentage and setting a preliminary figure. 180 days from enactment to complete. (Sec. 202).

2. NPR is outstanding on minimum rate regulation (Ex Parte No. 355). Parties have been asked to comment on the effect of the legislation. (Sec. 201).

3. NPR to establish new policies on the determination of market dominance. (Sec. 202).

4. NPR setting on an interim basis the average variable cost percentage necessary to produce a market rate of return. To be used by rail carriers to refile their rates on recyclables for other than iron and steel commodities. Rail carriers have 90 days to file. (Sec. 204).

5. NPR to determine whether, and to what extent, product competition should be considered in proceedings to determine the reasonableness of rail rates. (Sec. 205).

6. NPR requesting comments on an inflation index mechanism and the possible repeal of the Commission's regulations on rail general increases in light of the index. (Sec. 203).

7. NPR establishing standards and procedures permitting a rail carrier to waive the collection of amounts due from a shipper, in certain circumstances, if such amounts are not significant. (Sec. 207).

8. NPR setting guidelines and proposing interim rule relating to summaries of contracts which are required to be filed with the Commission. (Sec. 208).

9. NPR to promulgate regulations for the filing of released rates. (Sec. 211).

10. Notice repealing the Commission's regulations on demand sensitive rates. (Sec. 209).

11. Notice repealing the Commission's regulations on capital incentive rates. (Sec. 210).

12. Notice modifying the Commission's regulations on the effective dates of increased and decreased rates. (Sec. 216).

13. NPR to determine standards and procedures to establish adequate revenue levels. (Sec. 205).

(more)

EXEMPTION FROM REGULATION

14. NPRs proposing various exemptions similar to the fresh fruit and vegetables exemption. (Sec. 213).

STATE REGULATION

15. Notice to States to file their standards and procedures on rail rates to determine if they are in accord with Commission procedure and standards. (Sec. 214).

BUSINESS ENTERTAINMENT EXPENSES

16. Notice to determine reasonable business entertainment expenses for rail carriers and motor carriers. (Sec. 215).

BRANCH LINES

17. NPR to define the phrase "reasonably expected costs" as it applies to branch line surcharges. 120 days to complete. [Sec. 217)(b)(2)(B)].

18. Notice to the public outlining the procedures to be followed in requesting variable cost and revenue data relating to surcharged routings. [Sec. 217(h)].

20. NPR to implement the Feeder Line Development Program. 60 days to implement. (Sec. 705).

PROCEDURAL RULES

21. Notice modifying the Commission's merger and abandonment procedural requirements in accord with the Act. (Sec. 228 and Sec. 402).

22. Notice of procedures to be followed in extensions of emergency service determinations. (Sec. 226).

Reports and Studies

1. Report to Congress on the impact on competition among shippers of variations between contract rates and single car rates. 90 days to complete. (Sec. 208).

2. Report to Congress whether rail carriers should continue to be subject to the liability limitation provisions of the Interstate Commerce Act, section 11707. One year to complete. (Sec. 211).

3. Report to Congress as to whether the surcharge provisions have adequately addressed the joint rate problems of rail carriers. Two years to report. (Sec. 217).

4. Study to determine if certain rates charged by the Alaska Railroad would have violated the Act, if such rates had been entered into after enactment of this Act. (Sec. 709).

5. Report to Congress on the reports of USRA, Conrail, and DOT on Conrail. Due May 1, 1981. (Sec. 703).

ICC

CONFERENCE REPORT ON S. 1946, RAILROAD TRANSPORTATION POLICY ACT OF 1980

Mr. FLORIO submitted the following conference report and statement on the Senate bill (S. 1946) an act to reform the economic regulation of railroads, and for other purposes.

CONFERENCE REPORT (H. REPT. No. 96-1430)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the bill (S. 1946) to reform the economic regulation of railroads, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the amendment of the House and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Staggers Rail Act of 1980".

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FINDINGS

SEC. 2. The Congress hereby finds that—

(1) historically, railroads were the essential factor in the national transportation system;

(2) the enactment of the Interstate Commerce Act was essential to prevent an abuse of monopoly power by railroads and to establish and maintain a national railroad network;

(3) today, most transportation within the United States is competitive;

(4) many of the Government regulations affecting railroads have become unnecessary and inefficient;

(5) nearly two-thirds of the Nation's intercity freight is transported by modes of transportation other than railroads;

(6) earnings by the railroad industry are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvements;

(7) by 1985, there will be a capital shortfall within the railroad industry of between $16,000,000,000 and $20,000,000,000;

(8) failure to achieve increased earnings within the railroad industry will result in either further deterioration of the rail system or the necessity for additional Federal subsidy; and

(9) modernization of economic regulation for the railroad industry with a greater reliance on the marketplace is essential in order to achieve maximum utilization of railroads to save energy and combat inflation.

GOALS

SEC. 3. The purpose of this Act is to provide for the restoration, maintenance, and improvement of the physical facilities and financial stability of the rail system of the United States. In order to achieve this purpose, it is hereby declared that the goals of this Act are—

(1) to assist the railroads of the Nation in rehabilitating the rail system in order to meet the demands of interstate commerce and the national defense;

(2) to reform Federal regulatory policy so as to preserve a safe, adequate, economical, efficient, and financially stable rail system;

(3) to assist the rail system to remain viable in the private sector of the economy;

(4) to provide a regulatory process that balances the needs of carriers, shippers, and the public; and

(5) to assist in the rehabilitation and financing of the rail system.

TITLE I—RAIL TRANSPORTATION POLICY

RAIL TRANSPORTATION POLICY

SEC. 101. (a) Chapter 101 of title 49, United States Code, is amended by inserting after section 10101 the following new 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 informaiton 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.".

(b) Section 10101(a) of title 49, United States Code, is amended by striking out "To ensure" and inserting in lieu thereof "Except where policy has an impact on rail carriers, in which case the principles of section 10101a of this title shall govern, to ensure".

(c) The section analysis of chapter 101 of title 49, United States Code, is amended by inserting after the item relating to section 10101 the following new item:

"10101a. Rail transportation policy.".

TITLE II—RAILROAD RATES AND INTERCARRIER PRACTICES

REGULATION OF RAILROAD RATES

SEC. 201. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by inserting after section 10701 the following new section:

"§ 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 transportation 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 transporation 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 transportatidn 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 title 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.".

(b)(1) Section 10761(a) of title 49, United States Code, is amended—

(A) by inserting "(other than a rail rate)" immediately after "A rate" in the first sentence;

(B) by inserting "(including a rail carrier)" immediately after "such a carrier" in the second sentence thereof; and

(C) by inserting "(including rail carriers)" immediately after "those carriers" in the third sentence thereof.

(2) Section 10701(b) of title 49, United States Code, is repealed.

(3) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately below the item relating to section 10701 the following new item:

"10701a. Standards for rates for rail carriers.".

DETERMINATION OF MARKET DOMINANCE

SEC. 202. Section 10709 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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 sec-

tion 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.".

BASE OF LESS FLEXIBILITY

SEC. 703. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by inserting after section 10707 the following new section:

"§ 10707a. Zone of rail carrier rate flexibility

"(a) In this section—

"(1) 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).

"(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.

"(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 (2) 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 jurisdiction 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 5 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 116 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 (2) 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) 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.".

(b) The section analysis of chapter 107 of title 49, United States Code, is amended by

inserting immediately after the item relating to section 10707 the following new item:

"10707a. Zone of rail carrier rate flexibility.".

(c)(1) Any rail carrier rate which increased over 70 percent between 1976 and 1979 inclusive for the transportation, in shipper owned equipment over a distance exceeding 2,550 miles between points within the United States, of coal pursuant to a tariff calling for an annual volume of more than 2,000,000 tons per year purchased by a municipally owned utility for the generation of electric power under a 20-year purchase agreement entered into by such utility in the year 1974 shall not be increased so long as coal is purchased under such original agreement, except that—

(A) during the period beginning October 1, 1980, and ending September 30, 1987, the Interstate Commerce Commission may permit increases in such rate which result in a revenue-variable cost percentage not more than 162 percent; and

(B) after October 1, 1987, such rate shall be subject to section 10701a of title 49, United States Code, and related to provisions of such title governing regulation of rail carrier rates, except that until such rate results in a revenue-variable cost percentage that is equal to or greater than the revenue-variable cost percentage applicable under section 10709(d) of such title, such rate may not be increased more than 4 percent, in addition to inflation, in any year.

(2) Neither the provisions of this subsection nor any rate subject to this subsection shall be admissible as evidence or considered in any way in any proceeding involving any other rail carrier rate that is commenced to determine market dominance under section 10709 of title 49, United States Code, or to determine reasonableness under section 10701a of such title.

TRANSPORTATION OF RECYCLABLE MATERIALS

SEC. 204. Section 10731 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of this title 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 requirement of this subsection.".

RATE REGULATION PROCEEDINGS; ADEQUATE REVENUES

SEC. 205. (a)(1) The Interstate Commerce Commission shall commence a proceeding for purposes of determining whether, and to what extent, product competition should be considered in proceedings under subtitle IV of title 49, United States Code, to determine the reasonableness of rail carrier rates. The Commission shall complete its proceeding under this subsection within 230 days after the effective date of this Act.

(2)(A) For purposes of this subsection, the term "product competition" means the availability to a consignee, at a competitive delivered cost and in sufficient quantities, of products or commodities which are of the same type as the commodity or product to which the rate in question applies, without regard to whether such products or commodities are available from the same or a different origin as those to which the rate applies.

(B) In determining the availability of alternative sources of a particular commodity for purposes of this subsection, such commodity must be capable, by reason of similar specifications, of being effectively utilized by the consignee.

(C) In determining the availability of alternative sources of coal for purposes of this subsection, such coal must be capable, by reason of similar specifications such as Btu's, sulfur content, and ash content, of being effectively utilized by the consignee.

(D) For purposes of this subsection, any coal imported in the United States for the generation of electricity by utilities shall not be taken into account in the determination of whether coal is available to a consignee from another source.

(3)(A) Nothing in this subsection shall be construed as requiring the Commission to modify its standards for the determination of the reasonableness of rail carrier rates under existing law and procedures.

(B) Nothing in this subsection shall be construed as altering the meaning, use, or interpretation by the Commission, the courts, or any party of the term "market dominance", as defined in section 10709(a) of title 49, United States Code. The enactment of this subsection shall not be considered by the Commission in any proceeding, or by any court on an appeal from that or any other proceeding, to determine the proper scope of the term "market dominance" or whether there is market dominance over the transportation to which any particular rate applies.

(b)(1) Section 10704(a)(2) of title 49, United States Code, is amended by inserting "and revise as necessary" immediately after "shall maintain".

(2) Section 10704(a) of title 49, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(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.".

INFLATION-BASED RATE INCREASES

SEC. 206. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 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.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10711 the following new item:

"10712. Inflation-based rate increases.".

INVESTIGATION AND SUSPENSION OF RATES

SEC. 207. (a) Section 10707(b)(1) of title 49, United States Code, is amended to read as follows:

"(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.".

(b) Section 10707(c) of title 49, United States Code, is amended to read as follows:

"(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.".

(c) Section 10707(d) of title 49, United States Code, is amended to read as follows:

"(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 title, 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 perofrmed 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 title, the rail carrier may refund any part of the portion of the decrease found to comply with this title 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 10761 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.".

(d) Section 10707(e) of title 49, United States Code, is repealed.

CONTRACTS

SEC. 208. (a) Subchapter I of chapter 107 of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new section:

"§ 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 services except as provided in this section.

"(b) 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.

"(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 carriers 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 11126 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 purchasers 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 had 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 and 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 movements 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.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10712, as added by this Act, the following new item:

"10713. Contracts.".

DEMAND SENSITIVE RATES

SEC. 209. Section 10727 of title 49, United States Code, and the item relating to such section in the section analysis for chapter 107 of such title, are repealed.

PHASEOUT OF CAPITAL INCENTIVE RATES

SEC. 210. (a) Section 10729 of title 49, United States Code, and the item relating to such section in the section analysis of chapter 107 of such title, are repealed.

(b) Notwithstanding any other provision of law, any rate established by a rail carrier under section 10729 of title 49, United States Code, prior to the effective date of this Act shall remain in effect in accordance with its terms, but for no longer than 8 years after the date it became effective, unless the parties otherwise agree. However, the Interstate Commerce Commission may, during the period such a rate is in effect, order such rate revised to a level equal to the incremental cost of providing the transportation if the Commission finds that the level then in effect reduces the going concern value of the rail carrier.

PERMISSIVE LIMITED LIABILITY RATES

SEC. 211. (a) Section 10730(a) of title 49, United States Code, is amended by inserting "and excluding any rail carrier" immediately after "motor common carrier of property".

(b) Section 10730 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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.".

(c) Section 11707(d) of title 49, United States Code, is amended—

(1) by inserting "(1)" immediately after "(d)";

(2) by inserting "(other than a rail carrier)" immediately after "delivering carrier"; and

(3) by adding at the end thereof the following new paragraph:

"(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 the 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.".

(d) Within one year after the effective date of this Act, the Attorney General and the Interstate Commerce Commission shall independently investigate whether rail carriers should continue to be subject to section 11707 of title 49, United States Code, and submit a report to the Congress setting forth recommendations to Congress for appropriate legislative action. Each such investigation shall address the following issues:

(1) Whether, in the case of traffic with respect to which rail carriers do not have market dominance, such carriers should be subject to any higher level of liability for loss and damage than they are willing to agree to with the shippers of such traffic.

(2) Whether, in the case of traffic with respect to which rail carriers have market dominance, such carriers should be subject to any greater liability than would be imposed under a statutory comparative negligence standard.

(3) Whether liability for damage to rail traffic should be determined under a no-fault liability system and what shippers should bear the cost of such a system.

(4) Whether venue in cases arising from rail carrier liability for damages to traffic should be further limited.

(5) Whether rail carrier property damage cases should be subject to laws other than Federal law.

(6) Whether the right to claims should be limited to either the shipper or receiver of property.

(7) Whether maximum time limits should be imposed on the filing of claims with rail carriers and the courts.

(8) Whether the prevailing party in a claims proceeding should be awarded attorneys fees in order to limit needless litigation.

(9) Whether excessive attorneys fees are awarded in cases under section 11707 of title 49, United States Code.

(10) Whether claimants should be able to recover damages in excess of the market value of the commodity transported unless liability for special or consequential damages is agreed to by the carrier in writing.

RATE DISCRIMINATION

SEC. 212. Section 10741 of title 49, United States Code, is amended by striking out subsection (c) and inserting in lieu thereof the following new subsections:

"(c) 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 10733 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.".

EXEMPTION

SEC. 213. Section 10505 of title 49, United States Code, is amended to read as follows:

"§ 10505. Authority to exempt rail carrier transportation

"(a) In a matter related to a rail carrier providing transportation 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 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 tranportation policy of section 10701a 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 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, or (2) to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle.".

INTRASTATE RATES

SEC. 214. (a) Section 11501(a) of title 49, United States Code, is amended—

(1) by striking out paragraph (2);

(2) by striking out "(a)(1)" and inserting in lieu thereof "(a)";

(3) by striking out "subchapter I or IV" and inserting in lieu thereof "subchapter IV"; and

(4) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

(b) Section 11501 of title 49, United States Code, is amended by redesignating subsections (b) and (c) as subsections (d) and (e), respectively, and by inserting immediately after subsection (a) the following new subsections:

"(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 title. 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 jurisdiction over intrastate rates, classi-

fications, 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.".

(c)(1) Section 11502(d)(2) of title 49, United States Code, as redesignated by subsection (b) of this section, is amended by inserting "and chapter 107 of this title" immediately before the period at the end of the first sentence.

(2) Section 10103(a) of title 49, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided in this subtitle, the".

(3) Section 10501(a)(2) of title 49, United States Code, is amended by inserting "such jurisdiction is not limited by subsection (b) of this section or the extent" immediately after "to the extent".

(4) Section 10501(c) of title 49, United States Code, is amended by inserting "(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)" immediately after "unless".

(5) Section 10501 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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 title pursuant to this section and section 11501(b) of this title) over transportation by rail carriers, and the remedies provided in this title with respect to the rates, classifications, rules, and practices of such carriers, is exclusive.".

BUSINESS ENTERTAINMENT EXPENSES

SEC. 215. Section 10751 of title 49, United States Code, is amended by striking out "(other than transportation by rail)" in subsections (a) and (b).

(b) The provisions of section 10751 of title 49, United States Code, as amended by subsection (a) of this section, shall apply to any expense of the type described in subsection (a) of such section 10751 that was incurred prior to the effective date of this Act (other than an expense with respect to which a penalty was paid pursuant to section 10761 of such title 49) or that is incurred on or after such effective date.

EFFICIENT MARKETING

SEC. 216. (a) Section 10762(c)(3) of title 49, United States Code, is amended by striking out the second sentence and inserting in lieu thereof the following: "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, 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.".

(b) Section 10762(d)(1) of title 49, United States Code, is amended by striking out "30-day" and inserting in lieu thereof "notice".

COMPENSATORY JOINT RATE RELIEF

SEC. 217. (a)(1) Chapter 107 of title 49, United States Code, is amended by inserting after section 10705 the following new section:

"§ 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 movement 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 carrier's 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 costs 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 subparagraph (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 purchasing 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 carriers' variable cost of transporting traffic to or from the line plus its reasonably expected costs for operating the line, the Commission shall determine the level of surcharge which would produce revenues equal to such figure and shall authorize such carrier immediately to apply such surcharges as will generate such revenue 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 costs described in subparagraph (A) of this paragraph.

"(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 paticipates 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 competitive 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 rates 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, 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 Com-

mission 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 another 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 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 surcharging 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 subsections (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 title, 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 rate 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 variable 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 90 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 II 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 90 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 sevice 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 rates, 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 carrier 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.".

(2) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10705 the following new item:

"10705a. Joint rate surcharges and cancellations.".

(b) For purposes of section 10705a of title 49, United States Code, the Interstate Commerce Commission shall classify all rail carriers on the basis of revenues, shall from time to time review its regulations setting forth revenue-based classifications for rail carriers, and shall make appropriate changes in such regulations in order to reflect inflation. The Commission shall not reclassify switching and terminal carriers, or any other rail carriers not classified on the basis of revenues on the effective date of this Act, for any purpose other than for purposes of such section 10705a.

(c)(1) The Interstate Commerce Commission shall include in its annual report to the Congress under section 10711 of title 49, United States Code, a report with respect to the application of surcharges and the cancellation of the application of joint rates by the Consolidated Rail Corporation and other rail carriers, during the preceding year, under section 10705a of title 49, United States Code. Each such report shall include—

(A) an analysis of the effect of application of surcharges and the cancellation of the application of joint rates under such section 10705a on shippers, ports, class II and class III rail carriers, railroad employees, and other elements of the rail system;

(B)(i) the number of surcharges applied by the Consolidated Rail Corporation and all other rail carriers under such section 10705a and the amount of revenue received by the Corporation and all other rail carriers from the application of such surcharges, (ii) the number of surcharges applied by the Corporation and all other rail carriers that were canceled under the procedures of such section 10705a, and (iii) the number of cancellations of the application of a joint rate by the Corporation and all other rail carriers under such section 10705a; and

(C) an analysis of the operation of the remedies made available to class III rail carriers under subsections (i), (j), and (k) of such section 10705a and to class II and class III rail carriers under subsection (l) of such section 10705a.

(2) The Interstate Commerce Commission shall, within 2 years after the effective date of this Act, submit a report to the Congress with respect to whether the provisions of section 10705a of title 49, United States Code, have adequately addressed the joint rate problems of rail carriers. The report shall include such recommendations with respect to such joint rate problems as the Commission considers necessary and appropriate.

EXPEDITED DIVISION OF REVENUES PROCEEDINGS

SEC. 218. (a) Section 10705(f)(1) of title 49, United States Code, is amended to read as follows:

"(f)(1)(A) 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 or 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—

"(i) 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

"(ii) in all cases other than those specified in clause (i) 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 the reasons to Congress.

"(B) The provisions of this paragraph imposing time limitations upon Commission action shall not apply to any division proceeding involving a joint rate participated in by a class III rail carrier.".

(b) Section 10705(f)(1) of title 49, United States Code, as amended by subsection (a) of this section, is further amended—

(1) by striking out subparagraph (B);

(2) by striking out "(A)" immediately before "The Commission.";

(3) by striking out "(i)" and inserting in lieu thereof "(A)";

(4) by striking out "(ii)" and inserting in lieu thereof "(B)"; and

(5) by striking out "clause (i) of this subparagraph" and inserting in lieu thereof "subparagraph (A) of this paragraph".

RATE BUREAUS

SEC. 219. (a) Section 10706(a)(1) of title 49, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(C) 'practicably participates in that movement' shall have such meaning as the Commission shall by regulation prescribe.".

(b) Section 10706(a)(2)(A) of title 49, United States Code, is amended—

(1) by inserting "publication," immediately after "initiation," in the first sentence; and

(2) by striking out "section 10101" in the second sentence and inserting in lieu thereof "section 10101a".

(c)(1) Section 10706(a)(3)(A) of title 49, United States Code, is amended to read as follows:

"(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.".

(2) Section 10706(a)(3)(B) of title 49, United States Code, is amended to read as follows:

"(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.".

(3) Section 10706(a)(3)(C) of title 49, United States Code, is amended—

(A) by inserting "(i)" immediately after "(C)"; and

(B) by adding at the end thereof the following new clause:

"(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 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 clauses (I) or (II) are satisfied before allowing the introduction of any such evidence.".

(4) Section 10706(a)(3) of title 49, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(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.".

(d) Section 10706(a) of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(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.".

(e) Section 10706(1)(1)(B) of title 49, United States Code, is amended by striking out "section 10101" and inserting in lieu thereof "section 10101a".

(f) The Interstate Commerce Commission may not take any action with respect to the elimination of general rate increases or decreases prior to April 1, 1982.

(g) The Interstate Commerce Commission shall require rail carrier members of a rate bureau to provide the employees of such rate bureau who are affected by the amendments made by this section with fair arrangements no less protective of the interests of such employees than those established pursuant to section 11347 of title 49, United States Code. For purposes of this subsection, the term "employees" does not include any individual serving as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions.

LONG AND SHORT HAUL TRANSPORTATION

SEC. 220. Section 10726(c) of title 49, United States Code, is repealed.

RAILROAD ENTRY

SEC. 221. (a) Section 10901(a) of title 49, United States Code, is amended by striking "will be enhanced by" and inserting in lieu thereof "permit".

(b) Section 10901 of title 49, United States Code, is further amended by adding at the end thereof the following new subsections:

"(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.".

SERVICE DURING PERIODS OF PEAK DEMAND

SEC. 222. Section 11101(a) of title 49, United States Code, is amended by adding at the end thereof the following new sentence: "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.".

RECIPROCAL SWITCHING

SEC. 223. Section 11103 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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.".

CAR SERVICE COMPENSATION

SEC. 224. (a)(1) Section 11122(b)(2) of title 49, United States Code, is repealed.

(2) Section 11122(b)(1) of title 49, United States Code, is amended by striking out "(1)" immediately before "The rate".

(b) Section 10702(a) of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new 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 aprties 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.".

CAR UTILIZATION

SEC. 225. (a) Subchapter II of chapter 107 of title 49, United States Code, is amended by inserting at the end thereof the following new section:

"§ 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 service 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.".

(b) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10731 the following new item:

"10734. Car utilization.".

CAR SERVICE ORDERS FOR EXIGENT CIRCUMSTANCES

SEC. 226. Section 11123(a) of title 49, United States Code, is amended to read as follows:

"(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.".

EMPLOYEE PROTECTION

SEC. 227. (a) Section 1170 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(e)(1) In authorizing any abandonment of a railroad line under this section, the court shall require the rail carrier to provide a fair arrangement at least as protective of the interest 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.".

(b) Section 1172 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) In approving an application under subsection (b) of this section, the Commission 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.".

MERGERS AND OTHER TRANSACTIONS

SEC. 228. (a) Section 11344(b) of title 49, United States Code, is amended—

(1) by inserting immediately after "section" the following: "which involves the merger or control of at least two class I railroads, as defined by the Commission"; and

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

"(3) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.".

(b) Section 11344 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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 a part of a plan or proposal developed under section 5(a)-(d) of the Department of Transportation Act (49 U.S.C. 1654(a)-(d)), accord substantial weight to any recommendations of the Secretary of Transportation.".

(c) Section 11344 of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new subsection:

"(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 Commission shall approve or disapprove applications under this subsection within 80 days after receipt of such application. The Commission shall approve applications which are not protested by interested parties within 80 days following receipt of such application.".

(d) Section 11345 of title 49, United States Code, is amended to read as follows:

"§ 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 chaper 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 Commision 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 30th 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 function 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 action under section 10327 of this title.".

(c) Any application filed or pending on the effective date of this Act under section 11343, 11344, or 11345 of title 49, United States Code, before the Secretary of Transportation, the Interstate Commerce Commission, or any court shall be adjudicated or determined as if this Act had not been enacted.

SAVINGS PROVISIONS

SEC. 228. (a) Any rate that is in effect on the effective date of this Act for transportation by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, may, during the 180-day period beginning on such effective date, be challenged in a complaint filed with the Interstate Commerce Commission by any interested party alleging that the rail carrier has market dominance over the transportation to which the rate applies, as determined under section 10709 of such title, and that the rate is not reasonable under section 10701a of such title.

(b) Any rate described in subsection (a) of this section—

(1) which is not challenged in a complaint filed within the 180-day period provided in such subsection; or

(2) which is challenged in such a complaint, but (A) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or (B) the rate is found to be reasonable,

shall be declared to be lawful and may not thereafter be challenged in the Commission or in any court (other than on appeal from a decision of the Commission).

(c) The provisions of this section shall not apply to any rate under which the volume of traffic moved during the 12-month period immediately preceding the effective date of this Act did not exceed 500 net tons and has increased tenfold within the 3-year period immediately preceding the bringing of a challenge to the reasonableness of such rate.

(d) The burden of proof in any proceeding under this section shall be on the complainant.

TITLE III—RAILROAD COST DETERMINATIONS

UNIFORM ACCOUNTING SYSTEMS

SEC. 301. Section 11142 of title 49, United States Code, is amended to read as follows:

"§ 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.".

RAILROAD COST ACCOUNTING

SEC. 302. (a) Chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following new chapter:

"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, accounting, 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 determination of all railroad costs for specific regulatory proceedings under this title.

"(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 title 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 systems

"(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 certification 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 pursuant to this title, 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 title, 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.".

(b) The analysis of chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following:

"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.".

CIVIL PENALTIES FOR VIOLATIONS OF ACCOUNTING PRINCIPLES PROVISIONS

SEC. 303. (a)(1) Chapter 119 of title 49, United States Code, is amended by inserting immediately after section 11913 the following new section:

"§ 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.".

(2) The section analysis of chapter 119 of title 49, United States Code, is amended by inserting immediately after the item relating to section 11913 the following new item:

"11913a. Accounting principles violations.".

(b) Section 11910 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A person that knowingly discloses confidential data made available to such person under section 11166 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.".

TITLE IV—RAILROAD MODERNIZATION ASSISTANCE

FEEDER RAILROAD DEVELOPMENT PROGRAM

SEC. 401. (a) Subchapter I of chapter 109 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 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 government authority but does not include a class I or a 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 has been placed 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; 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 presented 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 concurrently notify the parties of such finding and publish such finding in the Federal Register.

"(d) In the case of any railroad line subject to sale under subsection (a) of this section, the 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 car-

rier 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 title, 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 provisions of this section.".

(b) The section analysis of chapter 109 of title 49, United States Code, is amended by adding immediately after the item relating to section 10909 the following new item:

"10910. Railroad development.".

ABANDONMENT

SEC. 402. (a)(1) Section 10903(b)(1) of title 49, United States Code, is amended by striking out the first sentence.

(2) Section 10903(c) of title 49, United States Code, is repealed.

(b)(1) Section 10904(a) of title 49, United States Code, is amended—

(A) by striking out "at least 60" and all that follows through 'effective" in paragraph (1);

(B) by striking out "and" at the end of paragraph (2)(A);

(C) by striking out the period at the end of paragraph (2)(B) and inserting in lieu thereof "; and";

(D) by adding at the end of paragraph (2) the following new subparagraph:

"(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."; and

(E) by inserting immediately before the period at the end of paragraph (3)(E) the following: ", and certifying that clauses (A)-(D) have been satisfied within the most recent 30 days prior to the date the application is filed".

(2) Section 10904(b) of title 49, United States Code, is amended to read as follows:

"(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.".

(3) Section 10904(c) of title 49, United States Code, is amended to read as follows:

"(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.".

(4) Section 10904 of title 49, United States Code, is amended by redesignating subsection (d) as subsection (e), and by inserting immediately after subsection (c) the following new subsection:

"(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 5 (a)-(d) of the Department of Transportation Act (49 U.S.C. 1654 (a)-(d)), the Commission shall consider whether any detriment from the abandonment or discontinuance exceeds the transportation benefit from the plan or proposal as a whole.".

(5) Section 10904(e) of title 49, United States Code, as redesignated by paragraph (4) of this subsection, is amended by inserting immediately before the period at the end thereof the following: ", except that the requirement of such description or identification in such diagram may be waived by the Commission of the application was approved by the Secretary of Transportation as part of a plan or proposal under section 5(a)-(d) of the Department of Transportation Act (49 U.S.C. 1654(a)-(d)), or the application is filed by a railroad in bankruptcy".

(c) Section 10905 of title 49, United States Code, is amended to read as follows:

"§ 10905. Offers of financial assistance to 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 government 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 government 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 new 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 all 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.".

CONVERSION OF ABANDONED RAILROAD RIGHTS-OF-WAY

SEC. 403. Section 809(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended—

(1) by inserting "(1)" immediately before the first sentence thereof; and

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

"(2) There are authorized to be appropriated, for the purposes of carrying out the provisions of subsection (b)(2) of this section, not to exceed an aggregate amount of $10,000,000 for the fiscal years 1981, 1982, and 1983. Such sums are authorized to remain available until expended. Notwithstanding the provisions of subsection (b)(2) of this section, the Federal share for each grant made from the funds authorized to be appropriated pursuant to this paragraph may not exceed 80 percent of the total cost of any project.".

EXTENSION OF REDEEMABLE PREFERENCE SHARE FINANCING

SEC. 404. Sections 505(e), 507(a), 507(d), and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825 (e), 827(a), 827(d), and 829) are each amended by striking out "September 30, 1980" wherever it appears and inserting in lieu thereof "September 30, 1982" in each such place.

FINANCING

SEC. 405. (a)(1) Section 505(d)(3) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(d)(3)) is amended by striking out "$700,000,000" and inserting in lieu thereof "$1,400,000,000".

(2) Sections 507(a) and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 827(a) and 829) are each amended by striking out "$600,000,000" and inserting in lieu thereof "$1,400,000,000".

(b)(1) Section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is amended by inserting "(a)" immediately after "SEC. 509." and by adding at the end thereof the following new subsection:

"(b)(1) Not more than $200,000,000 of the funds received by the Secretary of Transportation from amounts appropriated under subsection (a) of this section shall be transferred by the Secretary to the United States Railway Association for use by the Association in accordance with section 216(b)(3) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)(3)). Such funds shall be transferred immediately upon the finding by the Finance Committee under such section 216(b)(3).

"(2) Not less than 5 percent of the funds received by the Secretary of Transportation from amounts appropriated under subsection (a) (excluding sums 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 purchase 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.

"(3) Of the funds authorized to be appropriated under this section (other than funds described in paragraphs (1) and (2) of this subsection) not more than $180,000,000 are authorized to be appropriated in fiscal year 1981."

(2) Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

"(3) (A) Amounts transferred to the Association pursuant to section 509(b)(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 may be used to purchase series A preferred stock of the Corporation to provide for the implementation by the Corporation of a program to reduce the Corporation's work force, if the Finance Committee finds that the implementation of such program will result in substantial savings to the United States.

"(B) An employee who ceases to be an employee as a result of the reduction of work force under a program implemented pursuant to this paragraph shall not, by reason of so ceasing to be an employee, or by reason of any work or employment entered into after so ceasing to be an employee, lose such employee's current connection with the railroad industry for the purposes of the Railroad Retirement Act of 1974.".

(c)(1) Section 505(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 725(a)) is amended—

(A) by inserting "(1)" immediately before "Any railroad"; and

(B) by adding at the end thereof the following new paragraph:

"(2) An employee or employee-shipper group may apply to the Secretary for financial assistance pursuant to subsection (b)(3) of this section.

"(3) A financially responsible person (as defined in section 10910(a)(1) of title 49, United States Code) may apply to the Secretary for financial assistance from funds made available pursuant to section 509(b)(2) of this title.".

(2) Section 505(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(b)) is amended by adding at the end thereof the following new paragraph:

"(3) The Secretary may approve applications to provide financial assistance to any employee or employee-shipper ownership group formed pursuant to a plan for the purchase or rehabilitation of a line or lines of railroad or of rail facilities which are considered to be in the public interest. The Secretary shall not use more than 20 percent of the total funds available under this section for such financial assistance. In considering the allocation of available funds and priority of eligible projects under this subsection, the Secretary shall consider the availability of viable alternatives to the ownership or rehabilitation by the eligible employee-shipper group for the continuation of rail service. Projects with no such alternative shall receive highest priority.".

(3) Sections 506 through 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 826 through 829) are amended by—

(A) inserting "employee or employer-shipper group" immediately after "railroad" wherever it appears;

(B) inserting "employee or employee-shipper groups" immediately after "railroads" wherever it appears; and

(C) inserting "employee or employee-shipper group's" immediately after "railroad's" wherever it appears.

(4) Section 505(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(d)) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) In the case of a Government authority that applies for financial assistance from funds made availble pursuant to section 509 (b)(2) for the purchase or rehabilitation of railroad lines purchased under section 10910 of title 49, United States Code, financing pursuant to this section shall be in the form of purchase by the Secretary of bonds or other debt obligations issued for such purpose by such Government authority.".

(5) Paragraph (4) of section 505(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 725(d)), as redesignated by this subsection, is amended by inserting ", bonds, and other debt obligations" immediately after "trustee certificates".

(d) Section 501 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821), as amended, is further amended by—

(1) striking out "and" at the end of paragraph (7);

(2) inserting "acquisition or sale of assets or securities," immediately after "merger," in paragraph (8);

(3) striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(4) adding at the end thereof the following new paragraphs:

"(9) 'consolidation' means the combination of separate rail facilities and the abandonment of the excess facilities, except that such term does not include the combination by a single railroad of multiple tracks into fewer tracks where the tracks do not constitute separate physical and operating lines of railroad; and

"(10) 'coordination' means the combination of rail freight traffic flows through the use of joint facilities arrangements or internally that result in a reduction of service on at least one facility and includes arrangements for joint use of tracks or other facilities and the acquisition or sale of assets.".

(e) The first sentence of section 511(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(a)) is amended by inserting immediately after "equipment" the following "(which includes but is not limited to computerized car management systems)".

TRANSACTION ASSISTANCE

SEC. 406. Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended by adding at the end thereof the following new paragraphs:

"(5) Financial assistance made available under paragraph (1)(B) of this subsection may be used to purchase, for purposes of rail banking, properties of the Milwaukee Railroad located in the State of Montana with respect to which an interest in future rail common carrier operations has been evidenced.

"(6) Applications for rail banking shall be treated equally with other applications for transaction assistance."

ELECTRIFICATION LOAN GUARANTEES

SEC. 407. Section 211(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(1)) is amended—

(1) by inserting "or any other railroad" immediately after "the Corporation" the first place it appears;

(2) by inserting "or such railroad" immediately after "the Corporation" the second and third places it appears; and

(3) by inserting immediately after the first sentence the following new sentences: "Upon application by the Corporation or by any railroad in reorganization in the region which receives a loan under section 211(a) of this Act, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 511 through 513 of such Act, guarantee obligations of the Corporation or such railroad for purposes of making capital improvements to coal export facilities.".

AMENDMENT TO THE REGIONAL REORGANIZATION ACT OF 1973

SEC. 408. (a) The second sentance of section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by inserting "is not required to make the findings with respect to subsections (e)(3) and (f) and" immediately after "the Association" the first place it appears.

(b) Section 211(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)(2)) is amended by striking out "$4,000,000" and inserting in lieu thereof "$7,500,000".

(c) The last sentence of section 211(d) of the Regional Rail Reorganizaiton Act of 1973 (45 U.S.C. 721(d)) is amended by striking out "1980" and inserting in lieu thereof "1981".

FEDERAL ASSISTANCE REPORT

SEC. 409. Within 90 days after the end of each fiscal year, the Secretary of Transportation shall submit a report to the Congress listing the specific Federal assistance provided the railroad industry during such fiscal year. Each such report shall set forth the reasons for each Federal loan or grant and explain the way in which such loan or grant contributed to the overall goal of providing a safe and efficient transportation system.

TITLE V—CONRAIL TITLE V LABOR PROTECTION

MONTHLY DISPLACEMENT ALLOWANCE

SEC. 501. Section 505(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(b)) is amended to read as follows:

"(b) MONTHLY DISPLACEMENT ALLOWANCE.—A protected employee shall be paid a monthly displacement allowance for any calendar month within the period identified in subsection (c) of this section in which the employee is deprived of employment or adversely affected with respect to such employee's compensation, in accordance with the following provisions:

"(1)(A) Effective on the effective date of the Staggers Rail Act of 1980, the protected rate of pay of a protected nonoperating employee (other than a maintenance-of-way employee) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be based on the rate of pay of the position held by the employee on September 1, 1979, or if the employee held no position on that date, the rate of pay of the last position held by the employee prior to that date. A guaranteed hourly rate of pay will be computed for each protected employee, based on the rate described in the preceding sentence, and will be (i) the actual hourly rate for hourly rated employees, (ii) the daily rate divided by 8 for daily rated employees, and (iii) the monthly rate divided by the working days in the claim month, further divided by 8, in the case of monthly rated employees. For employees occupying relief positions, the guarantee shall be computed on the basis of the weighted average daily rate of the positions relieved. Extra list employees will be guaranteed the extra list rate.

"(B) In the event a protected employee's position is abolished or such employee is displaced and is thereby required to occupy a position paying an hourly rate that is less than such employee's guaranteed hourly rate, the protected employee shall be paid the difference between the hourly rate of pay of the position such employee is occupying and his guaranteed hourly rate for all hours included in the straight time work schedule of such employee's position for the month of claim, less any time lost on account of voluntary absences other than vacations. Hours worked in excess of the straight time work schedule shall be paid in addition to the guarantee at the rate applicable to the position occupied, as provided for in the applicable collective bargaining agreement.

"(C) For any month or portion thereof in which a protected employee is deprived of employment, the protected employee shall be paid such employee's guaranteed hourly rate for the number of hours such employee would have worked in the straight time work schedule of such employee's previously held position.

"(D) Notwithstanding the provision that the protected rate shall be the rate of the position held on or immediately preceding September 1, 1979, if a protected employee becomes the permanent incumbent of a higher rated position and is not disqualified therefrom, the higher rate shall become such employee's protected rate.

"(2) Notwithstanding paragraph (1) of this subsection, effective on the effective date of the Staggers Rail Act of 1980, a protected maintenance-of-way employee shall be afforded his average monthly compensation, which is defined as the total compensation received by such employee during the 12 months immediately preceding January 1, 1975, divided by his total time paid for during that period and multiplied by 174 or by his average monthly time paid for, whichever is less, and adjusted to reflect subsequent general wage increases. If a protected employee is deprived of employment or if the employee's straight-time compensation in his current position is less in any month than the employee's average monthly compensation, the employee shall be paid the difference between his straight-time earnings, if any, and 60 percent of the average monthly compensation, less any time lost on account of voluntary absences other than vacations. If, at the close of the calendar year, the sum of the protected employee's annual straight-time compensation, monthly displacement allowance payments and offsets applicable pursuant to this title is less than the employee's average monthly compensation multiplied by 12, the employee shall receive an additional payment representing the difference. If in the previous calendar year an employee has received displacement allowance payments in excess of his annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by section 505(g) of this title.

"(3) Effective on the effective date of the Staggers Rail Act of 1980 a protected operating employee (as defined in Interstate Commerce Commission classifications 107 through 128) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be afforded his average monthly compensation computed in accordance with this subsection as in effect prior to such effective date, but subject to a maximum amount equal to one-twelfth of the average annual earnings of all employees in the Interstate Commerce Commission classification, computed by cumulating the employee earnings reported to the Commission by the Corporation on a monthly basis for calendar year 1977 for the Interstate Commerce Commission classification of operating service in which such employee performed the preponderance of such employee's work in

calendar year 1974, increased by applicable general wage increases. If the employee performed no operating service in 1974, the Interstate Commerce Commission classification shall be determined by the preponderance of such employee's operating service in an immediately preceding calendar year. If the average monthly compensation of a protected operating employee exceeds the maximum amount described in the first sentence of this paragraph, the average monthly compensation of the employee will be reduced to such maximum amount for purposes of computing such employee's monthly displacement allowance, if any. If the average monthly compensation of a protected operating employee is less than such maximum amount, the average monthly compensation of the employee will be used to compute such employee's monthly displacement allowance, if any. If a protected employee is deprived of employment, or if the employee is adversely affected with respect to his compensation such that the compensation in such employee's current position is less in any month than the average monthly compensation of the employee or such maximum amount, whichever is less, the employee shall be paid 75 per centum of the difference between such employee's earnings, if any, and the lesser figure, minus any time lost on account of voluntary absences other than vacations. If at the close of the calendar year the sum of the protected employee's annual earnings, monthly displacement allowance payments, and offsets applicable pursuant to this title is less than such employee's average monthly compensation subject to the maximum amount and multiplied by 12, the employee shall receive an additional payment representing the difference. In the computation of the annual payment, if during the calendar year an employee has been force assigned to, or has been required to exercise seniority to, a position in an Interstate Commerce Commission classification with a lesser maximum amount than the maximum amount applicable to such employee's 1974 Interstate Commerce Commission classification, such employee shall be paid the difference without credit being taken for compensation earned by virtue of actual working hours in the calendar year in excess of the number of hours paid for in such employee's average monthly compensation multiplied by 12 or such employee's annual 1977 maximum amount, whichever is less. An employee's compensation for purposes of this subsection shall not include savings sharing productivity payments received pursuant to paragraph (t) of the Crew Consist Agreement between the Corporation and the United Transportation Union dated September [illegible] 1978. If, in the previous calendar year, an employee has received displacement allowance payments in excess of such employee's annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by subsection (g) of this section.

"(4) Effective on the effective date of the Staggers Rail Act of 1980, a protected noncontract employee who has been deprived of employment or adversely affected with respect to such employee's compensation shall retain his average monthly compensation and monthly displacement allowance computed in accordance with this subsection as in effect prior to such effective date. In the event such noncontract employee exercises or has exercised seniority in a craft or class of operating employees, such employee's entitlement to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be the same as the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised. In the event such noncontract employee exercises or has exercised seniority in a craft or class of nonoperating employees, the entitlement of such employee to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be consistent with entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised, except that the protected rate of pay shall be based on the rate of pay of the position first obtained through the exercise of seniority rather than the rate of any position held on or prior to September 1, 1979.

"(5) Notwithstanding the preceding provisions of this subsection, employees who prior to September 1, 1979, accepted transfer to positions requiring a change of residence pursuant to subsection (d) of this section, shall retain their average monthly compensation and monthly displacement allowance computed in accordance with this subsection prior to the effective date of the Staggers Rail Act of 1980.

"(6) In determining compensation in a protected employee's current employment, such employee shall be treated as occupying the position producing the highest rate of pay to which such employee's qualifications and seniority entitle the employee under the applicable collective bargaining agreement and which does not require a change in residence. A protected operating employee will be considered to be occupying the position producing the highest rate of pay if the employee occupies a position producing compensation equal to such employee's average monthly compensation, subject to the maximum amount.

"(7) With respect to a protected employee who has been deprived of employment, the monthly displacement allowance shall be reduced by (A) the full amount of any unemployment compensation benefits received by such employee, and (B) an amount equivalent to any outside earnings of such employee.

"(8) A protected employee's average monthly compensation or protected rate of pay shall be adjusted from time to time thereafter to reflect subsequent general wage increases.

"(9) The average monthly compensation or protected rate of pay provided by this section shall in no event exceed $2,500 in any month, except that such amount shall be adjusted to reflect general wage increases subsequent to April 1, 1976.

"(10) A protected employee and his representative shall be furnished with such employee's protected rate of pay, or average monthly compensation and average monthly time paid for, subject to the maximum amount, computed in accordance with the terms of this subsection. Each protected employee who has been deprived of employment or his representative and the employer shall agree upon a procedure by which the employee shall keep the employer currently informed of the unemployment compensation benefits received by such employee and the earnings of such employee in employment other than with such employer.

"(11) In the case of a supplemental transaction—

"(A) with respect to an employee described in paragraph (1) of this subsection who was not employed on September 1, 1979, the protected rate of pay of such employee shall be based on the rate of pay of the position held by such employee on the first day of the first month after September 1979 in which such employee was employed;

"(B) with respect to an employee described in paragraph (2) of this subsection who was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed; and

"(C) with respect to an employee described in paragraph (3) of this subsection—

"(i) if such employee was employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of such 12-month period; and

"(ii) if such employee was not employed during the 12 months immediately preceding January 1, 1975, the preponderance of work of such employee shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed.

DURATION OF MONTHLY DISPLACEMENT ALLOWANCE

SEC. 502. Section 505(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(c)) is amended to read as follows:

"(c) DURATION OF MONTHLY DISPLACEMENT ALLOWANCE.—The monthly displacement allowance provided for in subsection (b) of this section shall, in the case of a protected employee with 5 or more years of service on the effective date of this Act, continue until the attainment of age 65 by such employee, and shall, in the case of a protected employee who has less than 5 years of service as of such date, continue for a period equal to the employee's total prior years of service, except that such monthly displacement allowance—

"(1) shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause;

"(2) shall not be paid with respect to any period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to retain or obtain a position available to the employee by the exercise of such employee's seniority rights in accordance with the provisions of this section;

"(3) shall not be paid to a protected employee deprived of employment with respect to any period of failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions (but the payment of monthly displacement allowances shall be resumed upon termination of the emergency); and

"(4) shall not be paid with respect to any month that commences after the effective date of the Staggers Rail Act of 1980 for which the employee has failed to make a claim for such allowance within 8 full calendar months (unless otherwise agreed upon by the employee or his representative and the employer) after the last day of the month for which such allowance is sought, except that such 8-month limit shall not apply to any claim which is the subject of or is based upon an arbitration decision issued pursuant to section 507 of this title.

Unless otherwise agreed upon by the employee or his representative and the employer, the entitlement of an employee to an allowance shall be approved or denied within 180 days after the claim therefor is made if such claim is filed during the 12-month period beginning on the effective date of the Staggers Rail Act of 1980, and within 90 days after the claim therefor is made if such claim is filed after such 12-month period. Any claim not approved or denied at the expiration of the time limits described in the preceding sentence shall be deemed approved.".

TRAINING AND TRANSFER

SEC. 503. (a)(1) Section 505(d) (1) and (3) of the Regional Rail Reorganization Act

of 1973 (45 U.S.C. 715(d) (1) and (2)) are each amended by inserting "or other employers with employees protected under this section" immediately after "Corporation" wherever it appears.

(b) Section 505(d)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715(d)(1)) is amended by inserting "or the system of other employers with employees protected under this section" immediately after "Corporation's system".

(3) Section 505(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715(d)(2)) is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of this subsection, a protected employee of the National Railroad Passenger Corporation shall not be required to transfer to a location outside the seniority district of such protected employee.".

(b) Section 505(d)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d)(4)) is amended by striking out "Transfers" and inserting in lieu thereof "Except as provided in paragraph (3) of this subsection, transfers".

(c) Section 505(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d)(4)), as amended, is further amended by adding at the end thereof the following new paragraph:

"(5) In the case of a marine craft or class on the Corporation's system, or in the craft or class of a Penn Truck Lines, Incorporated, employee, transfers to vacancies requiring a change in residence shall be subject to the following:

"(A) The vacancy shall be first offered to the junior qualified protected employee or employees deprived of employment in the seniority district where the vacancy exists, and each such employee shall have 20 days to elect one of the options set forth in paragraph (1) of this subsection. The Corporation shall determine the number of junior qualified protected employees deprived of employment (not to exceed four employees per offer) who will be included in the offer of transfer. The vacancy will be awarded to the most junior qualified protected employee who accepts transfer. Other qualified protected employees who have accepted the transfer will retain their status as employees deprived of employment. Employees junior to the acceptor who have elected one of the options set forth in paragraph (1) of this subsection shall retain the option. If the vacancy is not filled, it may be again offered in inverse seniority order to remaining qualified protected employee(s) deprived of employment (not to exceed four employees per offer) in the seniority district.

"(B) If there are no qualified protected employees deprived of employment in the seniority district where the vacancy exists, the vacancy may be offered in inverse seniority order to qualified protected employees deprived of employment (not to exceed four employees per offer) on the system, in accordance with the procedure in subparagraph (A) of this paragraph. Employees offered transfer pursuant to this paragraph will be afforded 20 days to elect one of the options set forth in paragraph (1) of this subsection.

"(C) The provisions of this paragraph shall not prevent the adoption of other procedures pursuant to an agreement made by the Corporation and representatives of the class or craft of employees involved.

"(D) When no bona fide vacancies exist in such craft or class, the Corporation may offer such employee comparable employment for which the employee is qualified, or for which the employee can be trained, in another craft or class. The Corporation shall first attempt to locate a comparable position in a seniority district with encompasses the employee's last work location, and if successful, a transfer notice may be tendered pursuant to subparagraph (A) of this paragraph. If no such position exists, the Corporation may tender the employee a transfer notice involving a position elsewhere on the system pursuant to subparagraph (B) of this paragraph. In the event it is necessary to train an employee after such employee's acceptance of a position pursuant to this subparagraph, such training shall be provided by the Corporation at no cost to the employee.".

(d) Section 505(1)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(1)(1)) is amended by adding at the end thereof the following new sentences: "The Corporation may simultaneously offer a position to not more than 4 protected noncontract employees. The position shall be given to the protected employee accepting transfer whom the Corporation considers to be best qualified for the particular position involved. Other protected employees who have accepted the transfer shall retain their previous status. Employees who have elected a voluntary suspension of employment at their home location in lieu of protective benefits or a severance of employment shall retain the option elected.".

PAYMENT, AUDIT, AND REPORT

SEC. 504. Section 509 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719) is amended to read as follows:

"PAYMENT, AUDIT, AND REPORT

"SEC. 509. (a) PAYMENT.—The Corporation, the Association (where applicable), replacement operators, and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title (including such amounts paid by the employer prior to the effective date of the Staggers Rail Act of 1980 and training costs incurred by the Corporation pursuant to section 505(d)(4)(D) of this title), other than provisions with respect to employee pension benefits, not to exceed an aggregate sum of $485,000,000, by the Railroad Retirement Board, upon certification to such Board in such detail as the Board may reasonably require, by the Corporation, the Association (where applicable), replacements operators, and acquiring railroads, of the amounts paid such employees, except that the aggregate amount of reimbursements made by the Board for the payment of monthly displacement allowances in the period after the effective date of the Staggers Rail Act of 1980 shall not exceed $15,000,000. There is authorized to be appropriated to the Secretary annually such sums as may be required to meet the obligations payable under this title, not to exceed the aggregate sum of $485,000,000. Upon the exhaustion of such authorization, the Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall retain responsibility for the payment of benefits otherwise reimbursable under this title, but they shall not be reimbursed therefor. There is further authorized to be appropriated to the Secretary such sums as may be necessary to provide for additional administrative expenses to be incurred by the Railroad Retirement Board in the performance of its functions under this section. Appropriations authorized under this section may be allocated by the Secretary to the Railroad Retirement Board.

"(b) AUDIT.—Beginning October 1, 1980, the Association shall conduct a program audit of the payment of benefits pursuant to this title and shall evaluate the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances. Such audits and evaluations shall be conducted in accordance with such rules and regulations as the Association may prescribe. The representatives of the Association shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to, or in use by or in connection with, the Corporation, replacement operators, acquiring railroads, or the Railroad Retirement Board which pertain to the benefits provided protected employees pursuant to this title and which are necessary to facilitate such audit and evaluation.

"(c) REPORT.—The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on the payment of benefits under this title and the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances.".

RAILROAD HIRING

SEC. 505. Title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.) is amended by adding at the end thereof the following new section:

"RAILROAD HIRING

"SEC. 510. Any protected employee of the Corporation and any employee of the Corporation who is separated or furloughed from his employment with the Corporation (other than for cause) shall, unless found to be less qualified than other applicants, have the first right of hire by any other railroad that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a railroad shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.".

SINGLE COLLECTIVE-BARGAINING AGREEMENT

SEC. 506. Section 504(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 774(d)) is amended to read as follows:

"(d) NEW COLLECTIVE-BARGAINING AGREEMENTS.—Not later than 60 days after the effective date of any conveyance pursuant to the provisions of this Act, the representatives of the various classes of crafts of the employees of a railroad in reorganization involved in a conveyance and representatives of the Corporation shall commence negotiation of a new single collective-bargaining agreement for each class and craft of employees covering the rate of pay, rules, and working conditions of employees who are employees of the Corporation. Such collective-bargaining agreement shall include appropriate provisions concerning rates of pay, rules, and working conditions, but shall not include any provisions for job stabilization resulting from any transaction effected pursuant to this Act which may exceed or conflict with those established herein. Negotiations with respect to such single collective-bargaining agreement, and any successor thereto, shall be conducted systemwide".

EMPLOYEE PROTECTION PAYMENTS

SEC. 507. Notwithstanding any other provision of law, the Consolidated Rail Corporation and other employers with employees protected under the provisions of title V of the Regional Rail Reorganization Act of 1973 shall, until the effective date of this Act, continue to make payments for employee protection under such Act in accordance with the provisions of such Act which were

in effect on January 1, 1979. Notwithstanding any other provision of law, such Corporation and employers shall be reimbursed for such payments in accordance with the provisions of section 509(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 779(a)).

TECHNICAL AMENDMENTS

SEC. 508. (a)(1) The item relating to section 509 in the table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended to read as follows:

"Sec. 509. Payment, audit, and report.".

(2) The table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended by inserting immediately after the item relating to section 509 the following new item:

"Sec. 510. Railroad hiring.".

(b) Section 102(16) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (16)) is amended to read as follows:

"(16) 'Secretary' means the Secretary of Transportation or the designated representative of the Secretary;".

(c) Section 201 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711) is amended—

(1) by amending subsection (d)(2) to read as follows:

"(2) three Government members, who shall be (A) the Secretary, acting directly or at any time through the Deputy Secretary of Transportation, the General Counsel of the Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration, (B) the Secretary of the Treasury, acting directly or at any time through an officer of the Department of the Treasury who has been appointed with the advise and consent of the Senate, and (C) the Chairman of the Commission, acting directly or at any time through the Vice Chairman of the Commission; and";

(2) striking out "through their respective Deputy Secretaries" from the first sentence of subsection (i) and inserting in lieu thereof "in the case of the Secretary, through the Deputy Secretary of Transportation, the General Counsel of the Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration, and, in the case of the Secretary of the Treasury, through an officer of the Department of the Treasury who has been appointed with the advise and consent of the Senate"; and

(3) by striking out the first sentence of subsection (j)(4).

(d) Section 501 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771) is amended—

(1) in paragraph (6), by inserting immediately after "disability," the following: "failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions,"; and

(2) by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(12) 'compensation' means earnings in employment subject to the Railroad Retirement Act.".

(e) Section 507 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 777) is amended by inserting ", section 509(b), or section 509(c)" immediately after "section 504(d)".

(f) The first sentence of section 403(d)(1) of the Rail Passenger Service Act (45 U.S.C. 563(d)(1)) is amended by striking out "If such State" and all that follows through "service".

TITLE VI—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

SEC. 601. (a) Section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) is amended by adding at the end thereof the following new subsection:

"(f) EXPEDITED PROPOSALS.—(1) Within 240 days after the effective date of Staggers Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that—

"(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis;

"(B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and

"(C) the proposed transfer is consistent with the goals set forth in section 206(a)(6) of this Act,

the Secretary shall develop such a proposal and may, after providing the Association, the Commission, and the States of Connecticut and Rhode Island an opportunity to review and comment on such proposal, petition the special court for an order to carry out such proposal.

"(2) The Secretary shall establish a fair and equitable price for any rail properties transferred pursuant to a proposal developed under this subsection.

"(3) If the special court determines that a proposal developed under this subsection is fair and equitable, meets the requirements of this subsection, and is in the public interest, it shall issue such orders as may be necessary to carry out such proposal. The provisions of paragraphs (2)-(6) of subsection (d) of this section shall apply to the determination of the special court under this subsection, except that the standards for such determination shall be those set forth in this paragraph.

"(4) In complying with the requirements of subsection (d)(7) of this section with respect to the application of the provisions of title V of this Act to supplemental transactions, the parties to an expedited supplemental transaction under this subsection and the representatives of the employees affected thereby shall enter into a new agreement pursuant to section 508 of this Act and shall not be bound by the terms of any agreement executed under such section 508 and in effect on the date of enactment of the Staggers Rail Act of 1980.".

(b) Section 102(10) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (10)) is amended by striking out ", within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation".

TITLE VII—MISCELLANEOUS PROVISIONS

ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

SEC. 701. (a)(1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

"(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.),

shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeal is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 914(E)) is amended by inserting "to employees" immediately after "liability".

(b)(1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad and labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Staggers Rail Act of 1980, unless the Rock Island Railroad, and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and

the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e)(1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arrangement entered into this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

"(f) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7)) is amended by striking out "Milwaukee Railroad Restructuring Act" and inserting in lieu thereof ", the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act.".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, District of Columbia, on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c)(1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 900) is amended by adding at the end thereof the following new subsection:

"(h)(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and canceled when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h)(1) (A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(d) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1)(A), by striking out "$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) by amending paragraph (4) to read as follows:

"(4) This subsection shall apply to (A) purchase offers submitted to the Trustee of the Rock Island Railroad Estate and filed with the Commission prior to September 15, 1980 (or such other time as the Secretary considers appropriate), and (B) purchase applications filed with the Commission prior to September 15, 1980 (or such other time as the Secretary considers appropriate) and approved by the court having jurisdiction over the reorganization of the Rock Island Railroad or the Milwaukee Railroad, as the case may be, and by the Commission.".

LOAN GUARANTEES

SEC. 702. (a) To promote competition in the transportation of coal, the Secretary of Transportation shall, no later than 75 days after the date of the issuance of the final environmental impact statement with respect to the loan application, take final action on any application for loan guarantees, under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, to be used in connection with joint ownership, construction, or rehabilitation of any facilities (including support facilities) for a second rail carrier to serve the Powder River Coal Region in Montana and Wyoming.

(b)(1) The Secretary of Transportation shall review the proposed Chicago and North Western connector line route and shall not approve any route which requires the use of any agricultural land unless (A) there is no feasible and prudent alternative to the use of such land, and (B) the proposed route construction plan requires all possible planning to minimize harm to such agricultural land resulting from such use. The Secretary of Transportation may not otherwise disapprove a proposed route for the Chicago and North Western line under the authority of this subsection. This review of a proposed route shall be conducted within 90 days after the final action specified in subsection (a) of this section.

(2)(A) The Secretary shall review the use of any agricultural land used in any route for newly constructed line and shall require, to the maximum extent prudent and feasible, that such railroad provide a private grade crossing for the convenience of each landowner whose agricultural holdings are divided by such newly constructed line when the Secretary finds that such division of property will cause a substantial disruption to the agricultural use of such land. The owners of such property shall file a request for such grade crossing with the Secretary within 180 days of the final determination of the route. The finding of the Secretary under this subsection shall be final.

(B) The Secretary shall render a decision on each request for grade crossing under this paragraph within 180 days of its receipt. Such review shall not require the delay of construction of new line under subsection (a) of this section.

(c)(1) Notwithstanding any other provision of law, the actions of Secretary of Transportation taken pursuant to subsections (a) and (b) of this section shall not be subject to judicial review except as provided in this section.

(2) A claim alleging the invalidity of this section may be brought no later than the 60th day following the date a final action is taken pursuant to subsections (a) and (b) of this section.

(3) A claim challenging an action of the Secretary of Transportation under subsection (a) or (b) of this section may be brought only on the grounds that such action will deny rights under the Constitution of the United States, is arbitrary, capricious, or an abuse of discretion, exceeds statutory jurisdiction, authority, or limitations, or is short of statutory right. Such a claim may be brought not later than the 60th day following the date of such action.

(4) A claim under paragraph (2) or (3) shall be barred unless prior to the expiration of such time limits, a complaint is filed in the United States Court of Appeals for the District of Columbia acting as a special court. Such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim in any proceeding instituted prior to or on or after the date of enactment of this Act.

(5) Any such proceeding shall be assigned for hearing and completed at the earliest possible date, and to the greatest extent practical shall take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court, and such court shall render its decision relative to any claim within 90 days from the date such claim is brought unless such court determines that a longer period is required to satisfy requirements of the Constitution of the United States.

(d) Notwithstanding any other provision of law, the Secretary shall take the final action described in subsection (a) of this section without regard to the consent, or lack thereof, of any Committee of the Congress.

CONRAIL STUDIES AND EMERGENCY FUNDING

SEC. 703. (a) For purpose of this section, the term—

(1) "Association" means the United States Railway Association;

(2) "Commission" means the Interstate Commerce Commission;

(3) "Corporation" means the Consolidated Rail Corporation;

(4) "rail properties" means assets or rights owned, leased, or otherwise controlled by the Corporation which are used or useful in rail transportation service;

(5) "region" has the meaning given such term in section 101(15) of the Regional Rail Reorganization Act of 1973; and

(6) "Secretary" means the Secretary of Transportation.

(b)(1) No later than April 1, 1980, the Association and the Corporation shall each submit a report to the Congress analyzing the impact, upon the Corporation, rail service in the region, railroad employees, the economy of the region, and other rail carriers in the region and elsewhere, and the Federal budget, of—

(A) no further Federal funding for the Corporation;

(B) continued Federal funding of the rail system of the Corporation as it is presently structured; and

(C) future Federal funding of the Corporation to the extent necessary to preserve rail service in the region which can be self-

supporting, without undue interim disruption of operations which will be maintained.

(2) Each report submitted under paragraph (1) of this subsection shall contain a description, under each of the Federal funding alternatives set forth in subsection (a) of this section, of the lines of the Corporation which would be maintained, the lines of the Corporation which would be abandoned and the lines which would be transferred.

(3) Each report submitted under paragraph (1) of this subsection shall also include specific recommendations with respect to—

(A) future projected funding requirements of the Corporation;

(B) future structure and activities of the Corporation in the region;

(C) any legislative action needed with respect to the matters described in subparagraphs (A) and (B) of this paragraph; and

(D) any other matters which the Association or the Corporation considers appropriate.

The specific recommendations submitted under this paragraph shall set forth alternatives for the Congress to consider in the event it determines that modification of such recommendations is appropriate.

(3) In developing recommendations in accordance with this subsection the Association and the Corporation shall identify measures designed to ensure a financially self-sustaining rail system in the region. The recommendations shall be based on analyses of rail properties which might be proposed for abandonment or transfer to another railroad or qualified person and proposed operating efficiencies which could improve the Corporation's revenue-to-cost ratio.

(5) In developing recommendations under this subsection, the Association and the Corporation shall each analyze and consider—

(A) projections of the Corporation's future traffic, revenues, operating costs, and capital requirements;

(B) rail properties which might be proposed for abandonment or transfer to another railroad or qualified person, taking into account the potential impact of changes in the regulatory environment;

(C) the impact on communities served by lines proposed for abandonment or transfer;

(D) proposed operating efficiencies which could improve the Corporation's revenue-to-cost ratio;

(E) the impact on the Corporation of proposed mergers by connecting or competing railroads;

(F) employee motivation and labor productivity programs and a projection of labor protection costs which could result from the recommendations;

(G) the future capital structure of the Corporation; and

(H) any other factors identified by the Association as relevant to the recommendations required to be developed and submitted pursuant to this section.

(6)(A) The Association and the Corporation shall, on the date of submission of their recommendations to the Congress under this subsection, transmit copies of such recommendations to the Secretary, the Commission, and the Governor of each State that would be affected by such recommendations. Upon request, the Association and the Corporation shall furnish a copy of their recommendations to any interested person.

(2) As soon as practicable after submission of their recommendations to the Congress, the Association and the Corporation shall publish in the Federal Register a summary of such recommendations and invite interested parties to comment on such recommendations.

(7) The Commission shall, no later than May 1, 1981, submit to the Congress its comments on the reports of the Association, the Secretary, and the Corporation under this subsection.

(8) Not later than April 1, 1981, the Secretary shall submit to the Congress his recommendations with respect to the future structure and operations of the Corporation. Not later than May 1, 1981, the Secretary shall submit to the Congress his comments and recommendations with respect to the reports of the Association and the Corporation under this subsection, and shall make any changes in his recommendations that he determines are necessary.

(9) The antitrust laws, as defined in section 601(a)(3) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 791(a)(3)), shall not apply to any action taken by the Association or the Secretary prior to May 1, 1981, in accordance with and under the authority of the provisions of this subsection.

(c) The Corporation shall, no later than March 15, 1981, submit to the Congress an analysis of the effects upon the Corporation and its employees of alternative changes in labor agreements and related operational changes. Such report shall include an analysis of any Federal funding that will be required.

(d) The Corporation shall, no later than January 15, 1981, submit to the Association its projections of the benefits to the Corporation of the Staggers Rail Act of 1980, its projections of changes needed in the structure of the rail system of the Corporation, including properties which may be abandoned or transferred, and other projections of potential savings or increased revenues to the Corporation.

(e) Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726 (b)), as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(4) Purchases of up to $320,000,000 of a series A preferred stock shall be made by the Association, subject to the availability of appropriations, as required and requested by the Corporation, if the Finance Committee makes an affirmative finding that the Corporation has taken appropriate action to eliminate losses on light density lines and other lines which are unprofitable. Such action shall include the imposition of surcharges on such lines, the abandonment of such lines, and the transfer of such lines.".

(f)(1) Section 216(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726 (a)) is amended by striking out "$2,300,000,000" and inserting in lieu thereof "$2,620,000,000".

(2) Section 216(g) of such Act (45 U.S.C. 726(g)) is amended by striking out "$3,300,000,000" and inserting in lieu thereof "$3,620,000,000".

(3) Section 210(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 720 (e)) is amended by inserting immediately after "section" in the first sentence thereof the following: "or under subsection (a) of section 360 of this Act".

USRA AUTHORIZATION OF APPROPRIATIONS

SEC. 704. Section 214(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 724(c)) is amended to read as follows:

"(c) ASSOCIATION.—For the fiscal year ending September 30, 1981, there are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this Act such sums as are necessary, not to exceed $30,000,000. Sums appropriated under this subsection are authorized to remain available until expended.".

FEEDER LINE REHABILITATION STUDY

SEC. 705. (a). The Secretary of Transportation and the Secretary of the Treasury shall jointly submit to the Congress, within 9 months of the effective date of this Act, a comprehensive report on the anticipated effect (including the loss of revenue to the Federal Treasury) of amending section 103 of the Internal Revenue Code of 1954 to provide an exemption from taxation for obligations incurred in connection with the rehabilitation of railroad feeder lines. Such report shall also include such criteria as may be necessary to prevent the abuse of such special tax status.

(b) For purposes of this section, railroad feeder line rehabilitation includes the acquisition, construction, reconstruction, or erection of any feeder line roadbed, track, trestle, depot, switching, and signaling equipment, or any other rail equipment (other than rolling stock).

EFFECT ON PENDING MATTERS

SEC. 706. In the case of any proposal docketed with a rate bureau prior to the effective date of this Act which is or becomes the subject of an application or proceeding before the Interstate Commerce Commission, such application or proceeding shall be determined as if this Act had not been enacted, and the antitrust immunity provided in section 10706(b) of title 49, United States Code, resulting from approval of such agreement shall continue in effect.

CONSTRUCTION OF AMENDMENTS

SEC. 707. With respect to the relationship between water carriers and rail carriers, none of the amendments made by this Act shall be construed to make lawful (1) any competitive practice that is unfair, destructive, predatory, or otherwise undermines competition and that was unlawful on the effective date of this Act, or (2) any other competitive practice that is unfair, destructive, predatory, or otherwise undermines competition.

SURPLUS PROPERTY

SEC. 708. Notwithstanding any other provision of law, the Consolidated Rail Corporation shall be considered a Federal agency for the sole purpose of Department of the Army Regulations 735-5, paragraph 1-16. Such Corporation may enter into a contract under the authority granted by this section only when it determines that the safety of the public so requires.

STUDY OF ALASKA RAILROAD RATES

SEC. 709. Within 6 months after the effective date of this Act, the Interstate Commerce Commission shall commence and complete a study to determine whether the rates charged by the Alaska Railroad pursuant to ICC-ARR Freight Tariffs 4108 and 4109 (as supplemented by supplements 1-4) would, if such rates had been entered into after the effective date of this Act, have constituted a violation of section 10701a(c)(1) of title 49, United States Code, as amended by this Act. To the extent feasible, such study shall be coordinated with the study by the State of Alaska in progress on the effective date of this Act.

EFFECTIVE DATES

SEC. 710. (a) Except as provided in subsections (b), (c), and (d) of this section, the provisions of this Act and the amendments made by this Act shall take effect on October 1, 1980.

(b) Section 206 of this Act shall take effect on January 1, 1981.

(c) Section 218(b) of this Act shall take effect on October 1, 1983.

(d) Section 701 of this Act shall take ef-

fect on the date of enactment of this Act.

And the Senate agree to the same.

HARLEY O. STAGGERS,
JAMES J. FLORIO,
JOHN M. MURPHY,
BOB ECKHARDT,
JIM SANTINI,
BARBARA A. MIKULSKI,
ROBERT T. MATSUI,
JAMES T. BROYHILL,
EDWARD R. MADIGAN,
TOM LOEFFLER,
GARY A. LEE,
Managers on the Part of the House.
HOWARD W. CANNON,
RUSSELL B. LONG,
J. JAMES EXON,
BOB PACKWOOD,
NANCY LANDON KASSEBAUM,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the text of the bill (S. 1946) to reform the economic regulation of railroads, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate amendment to the House amendment struck out all of the House amendment and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the Senate amendment and the House amendment. The differences between the Senate amendment, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SUMMARY AND DESCRIPTION

Section 1—Short title

Section 1 states that this bill may be cited as the "Staggers' Rail Act of 1980"

Section II—Findings

The Conferees find that historically the enactment of the Interstate Commerce Act was essential to prevent an abuse of monopoly power by railroads and to maintain a national railroad network as an essential part of the national transportation system. However, today, most transportation is competitive and many of the Government regulations affecting railroads have become unnecessary and inefficient. Nearly two-thirds of intercity freight is transported by modes of transportation other than railroads. Earnings by the railroad industry are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvements. By 1985, the railroad industry will experience a capital shortfall of between $10 billion and $20 billion. The industry's failure to achieve increased earnings will result in either further deterioration of the rail system or the need for additional Federal subsidy. Modernization of economic regulation of railroads, with greater reliance on the marketplace, is essential to achieve maximum utilization of railroads, to save energy and to combat inflation.

Section III—Goals

The specific goals of this Act are to assist the industry in the rehabilitation and financing of the rail system; to reform Federal regulation to preserve a safe, adequate, economical, efficient and financially stable rail system, to assist the rail system to remain viable in the private sector of the economy; and to provide a regulatory process that balances the needs of carriers, shippers, and the public. The overall purpose of the Act is to provide, through financial assistance and freedom from unnecessary regulation, the opportunity for railroads to obtain adequate earnings to restore, maintain and improve their physical facilities while achieving the financial stability of the national rail system.

TITLE I—RAIL TRANSPORTATION POLICY

Title I of the Conference substitute sets forth the congressional declaration of policy for railroads by adding a new section 10101 (a) to the Interstate Commerce Act. The new section establishes a specific rail transportation policy to guide the Commission in its duties in regulation of the railroad industry. The Conferees intend that this policy include the encouragement and promotion of the transportation of coal by rail in accordance with the objective of energy independence at rates which do not exceed a reasonable maximum where there is an absence of effective competition.

TITLE II—RAILROAD RATES AND INTER-CARRIER PRACTICES

Title II is related to the key areas of the Interstate Commerce Act which involve railroad rates and inter-carrier practices. In general, the title assures railroads substantially more rate freedom than is afforded them under existing law. It continues the policy started under the Railroad Revitalization and Regulatory Reform Act of 1976 of substantially eliminating rate regulation of railroads where there is effective competition. The title also affirmatively encourages railroads to use new marketing practices by permitting contracts between carriers and shippers; permissive limited liability rates; business entertainment expenses; efficient marketing through factor implementation of rates; and premium charges to encourage better car utilization.

A number of provisions are included to foster greater competition by simplifying coordination, minor mergers procedures, entry and reciprocal switching agreements. Moreover, the Commission is given the mandate to place greater emphasis on the need for carriers to have adequate revenue levels. Among other tools given the Commission for this purpose is the ability to determine the effects of inflation and to assure carriers the opportunity to recover inflation.

Specifically, Title II provides the Interstate Commerce Commission with jurisdiction to determine rate reasonableness only when a rail carrier has market dominance and the rate exceeds the applicable revenue-variable cost percentage threshold. The revenue-variable cost percentage is a level below which the Commission has no jurisdiction over the reasonableness of maximum rates. This codifies and refines the practice followed by the Commission for determining market dominance on, among other matters, the relationship of revenue to variable cost.

For four years begining October 1, 1980 and until October 1, 1984, there is a rate flexibility zone of 6 percent, subject to a cumulative total of 18 percent, in addition to inflation. If any portion of the 6 percent rate increase is not implemented in a year in which it is authorized, it may be carried over to the succeeding year. However, within the four year p eriod no carrier can take an increase within the flexibility zone in excess of 12 percent in any one year except that in the first year the zone is limited to 6 percent. If any portion of the 18 percent cumulative rate increase is not taken by October 1, 1984, it may be carried over to the next two succeeding years, with the limitation of an annual increase of 10 percent between October 1, 1984 and October 1, 1986.

Effective October 1, 1984, and in succeeding years thereafter, a carrier may annually implement a 4 percent increase, which may not be carried over in subsequent years.

The 4 percent zone is not available to increase single-line rates of carriers with adequate revenues. The Commission is to promulgate regulations in connection with joint-line movements involving both carriers with adequate revenues and carriers with inadequate revenues.

When determining the reasonableness of rates, the Commission is to recognize the policy that rail carriers shall earn adequate revenues. This title also authorizes carriers to increase a rate to cover cost increases due to inflation.

The rate of a carrier in effect upon enactment of this Act may be challenged before the Commission during the 180 day period following enactment on the basis that the carrier has market dominance over the transportation to which the rate applies. If the rate is not challenged during the 180 day period, or is found to be lawful, the rate may not be challenged thereafter. This provision does not apply to rates for volumes of traffic in the past year of under 500 net tons and which has increased tenfold in the three years prior to the challenge. The burden of proof under this section is with the complainant.

In order to encourage more effective marketing by railroads the notice period for rate increases is lowered from 30 days to 20 days and from 30 days to 10 days for rate decreases.

The Commission is required to maintain, and revise as necessary, standards and procedures for determining revenue adequacy. On the basis of the standards, the Commission is to determine within 180 days of the effective date of this Act and annually, thereafter, which carriers are earning adequate revenues.

The Commission may prescribe, on a quarterly basis, a percentage rate increase or rate index for rail carriers to compensate for inflationary cost increases. Within 60 days after the Commission prescribes such percentage rate increase or index, rail carriers intending to be excluded from such percentage rate increase or index, shall notify the Commission, and all carriers participating in a particular route must agree to be excluded for the exclusion to be effective. The percentage rate index may include percentage increases within a specified range to allow carriers to recover a total increase specified by the Commission as necessary to compensate for inflationary cost increases.

The Commission must complete an investigation or suspension proceeding concerning a rate, classification, rule or practice within 6 months, or 8 months if it reports to Congress. The Commission may not suspend a proposed rate, classification, rule or practice if a protestant is likely to prevail on the merits, substantial injury will result without the suspension, and because of the peculiar economic circumstances of the protestant preclude protection of the protestant by means of a refund if the rate is later found unreasonable by the Commission.

This title authorizes one or more carriers to enter into contracts with one or more shippers unless the Commission finds that the proposed contract unduly impairs the ability of the contract carrier(s) to meet their common carrier obligation or unreasonably discriminates against a port. In the case of agricultural commodities (including forest products and paper), a complaint may be filed on the grounds that a carrier has unreasonably discriminated by refusing to provide the complainant a similar contract under similar conditions or that the proposed contract constitutes a destructive competitive practice.

Once a contract has been approved, the

Commission cannot require a carrier to violate its terms except under the Commission's emergency powers. The exclusive remedy for a breach of contract is an action in a State or U.S. district court unless the parties otherwise agree.

Demand sensitive rates under Section 10724 of title 49 U.S.C. are repealed.

Capital incentive rates under Section 10729 of title 49 U.S.C. are repealed except that capital incentive rates prior to enactment of this Act shall remain in effect no longer than five years, unless the parties otherwise agree.

To provide both shippers and railroads with greater rate-service options the Act permits the establishment of lesser liability requirements than presently assured by law. Such liability limitations are available only if the shipper agrees to them.

To permit use of the new provisions available to both shippers and railroads, Section 10741 of title 49 U.S.C. is amended by exempting certain services from the rate discrimination provision in current law. Exempted are certain contracts, surcharges and cancellations, separate rates for distinct services, rail rates applicable to different routes or business expenses authorized under section 10751 of this title. These exemptions do not affect existing prohibitions against discrimination between ports or within the same port.

The bill authorizes a carrier to surcharge or cancel a joint rate when the existing joint rate does not provide the carrier with 110 percent of its variable cost. Other carriers may prevent the surcharge or cancellation from becoming effective, however, by adjusting the division of revenues or proposing a new rate which brings the surcharging or cancelling carrier's revenues up to 110 percent. Alternatively, a shipper or carrier can reduce to the 110 percent level a surcharge which would provide the surcharging carrier with revenues greater than 110 percent of variable cost, and can prevent a joint rate from being cancelled by providing a surcharge in lieu of cancellation which would bring the revenues of the cancelling carrier to 110 percent of its variable cost. Such a reduced surcharge or surcharge in lieu of cancellation of a joint rate is to be imposed by the Commission in conformity with the petition of the protesting shipper or carrier.

In addition a class III railroad may obtain review by the Commission of either a surcharge or cancellation if the surcharge or cancellation will have an adverse effect on the ability of a class III railroad to compete effectively, or if it will affect the class III railroad's last available route for a particular movement and produce certain adverse results for the class III railroad, or if it will adversely affect the competitive position of a shipper or receiver located on the class III railroad. In making its review, the Commission shall act to prevent anticompetitive surcharges or cancellations which affect class III railroads, and the Commission is given authority to preserve service on the route participated in by the class III railroad. The Commission may rescind the surcharge or cancellation and may require the surcharging or cancelling carrier to carry the traffic at less than 110 percent of its variable costs if necessary to preserve competition or service by the class III railroad which is required by the public interest.

The conferees note that nothing in the bill's protections reduces the availability of the Federal antitrust laws to protect against improper use of the surcharge or cancellation provisions. A rail rate to which a surcharge is applied shall constitute a rate increase for the purpose of section 10701a and 10706 of title 49, United States Code. An expedited division of revenue procedure is also established.

A similar below cost service problem occurs with respect to light density lines. That problem, however, relates more to shippers on a particular line than to inter-carrier relationships. The bill institutes the use of branch-line surcharges on any lines carrying less than 3,000,000 gross tons per year. (1,000,000 gross tons for carriers with adequate revenues).

State authority over intrastate transportation is limited to administering the provisions of the Interstate Commerce Act. Within 120 days of the effective date of this Act, State authorities must submit to the Commission standards and procedures to be used in exercising such jurisdiction. Within 90 days of the receipt of the State's filing, the Commission shall certify the State's compliance with the regulations and procedures of this Act. States are precluded from authority over general rate increases, inflation-based rate increases and fuel adjustment surcharges.

In order to encourage competitive pricing, no rail carrier is permitted to discuss single line rates proposed by another carrier, except for the purposes of general rate increases and broad tariff changes. No rail carrier may discuss a joint line rate unless it practicably participates in that movement. After January 1, 1984 (or earlier if the Commission decides), no carrier may discuss a joint line rate where there are two or more routes between the same end points, except with a carrier that forms part of a particular single route. If the Commission finds that implementation of the section is not feasible, it may delay or suspend implementation in whole or in part.

Transcripts or sound recordings and records of votes are to be available to the Commission and other Federal agencies.

The Commission shall require protective conditions for rate bureau employees.

Competition is encouraged by permitting entry by a rail carrier, through new construction, if public convenience and necessity permit or require it. Where the Commission has authorized construction or extension of a line, no other railroad may refuse to permit the carrier to cross its property if the construction or operation does not interfere with the operation of the crossed line and the owner of the crossing line compensates the owner of the crossed line. The Commission may require protective conditions for the employees affected by new construction.

The Commission may require reciprocal switching where practicable and in the public interest or where such agreements are necessary to provide competitive rail service. The Commission may establish conditions and compensation where carriers are unable to agree within a reasonable time. The Commission may require that reciprocal switching agreements include labor protection provisions.

This title repeals existing incentive per diem provisions. The Commission is authorized to grant shippers antitrust immunity to conduct negotiations with carriers regarding charges for rolling stock owned or leased by such shippers. The participants have the right to petition the Commission to set compensation at a reasonable level, if the parties cannot agree.

In order to encourage more efficient car utilization, carriers are permitted to charge for special services or special levels of service not otherwise included in any tariff applicable to the movement.

For transactions that do not involve the merger or control of at least two Class I railroads, the Commission is required to approve an application unless it finds there is a likelihood of substantially lessening competition, creation of a monopoly or restraint of trade and the anticompetitive effects of the transaction outweigh the public interest.

The application of the Elkins Act to business expenses by rail carriers and motor carriers is clarified by treating these businesses as all other businesses.

Finally the Commission is given exemption authority if regulation is not necessary to carry out the Railroad Transportation Policy and protect shippers from market abuse.

TITLE III—RAILROAD COST DETERMINATIONS

Previous accounting and reporting systems developed by the Commission for rail carriers are to be replaced by the accounting and reporting requirements of Title III of this bill. There is established a Railroad Accounting Principles Board for the purpose of developing cost accounting principles which identify variable costs which accurately represent the most accurate costs of rail movements.

The Board shall exist for three years. Within two years, it shall issue cost determination principles necessary for regulatory purposes which shall identify accurate costs. The principles are to apply to the entire railroad industry to ensure consistency in railroad cost accounting practices.

Each rail carrier is to maintain a system that is in compliance with the rules promulgated under Section 11163 of this title and are required to make cost data available to shippers, states, ports, communities and other interested parties that are party to a Commission proceeding.

TITLE IV—RAILROAD RECONSTRUCTION ASSISTANCE

This title continues the existing redeemable preference share financing program.

The Secretary must report to Congress within 90 days after the end of each fiscal year specifying how each grant or loan contributes to the goal of providing a safe and efficient rail system.

A new feeder railroad development program is established which gives shippers the opportunity to acquire a rail line carrying less than 3,000,000 gross tons a year if the railroad is not providing adequate service. After the third year any rail line may be acquired under this provision. The Commission must make certain findings before any acquisition can take place and the rail carrier must be given compensation for selling the line.

New time limits are established for considering abandonment applications. Applications for abandonment which are not opposed would be granted within 45 days, and the abandonment would occur within 75 days. With respect to unopposed applications, this would basically codify existing ICC practice. For applications which are opposed, ICC decisions would be reached much more quickly than under present law, and the ICC would be required to process and decide such cases within 9 months. No changes are made in the substantive abandonment standards.

The low interest redeemable preference share program under section 505 of the 4R Act is extended for two years. An additional $700,000,000 is authorized for the program, and of that amount $200,000,000 shall be transferred to the United States Railway Association for use by Conrail in reducing the size of its workforce.

Section 211(1) the Regional Rail Reorganization Act is also amended to make available to railroads in addition to Conrail loan guarantees for the purpose of electrifying high density mainlines or for other capital improvements to achieve the goals to the national energy policy.

Finally, section 211(d) the Regional Rail Reorganization Act of 1973 is amended to extend the time period from December 31, 1980 to December 31, 1981 to permit the United States Railway Association to continue to act on loan modifications this provision and increases the principal amount of a loan made under Section 211(d) from $4 million to $7.5 million.

TITLE V—CONRAIL TITLE V LABOR PROTECTION

Section 501 changes the formula for calculating monthly guarantees for non-operating employees, maintenance-of-way employees and operating employees. No change is proposed in the guarantee formula currently applicable to non-contract employees and employees who have been transferred.

Section 502 would restrict the payment of the MDA in two situations. First, a protected employee's entitlement to an MDA would be suspended for the period that the employee fails to work for reasons beyond the control of his or her current employer due to strikes, floods, snowstorms, and similar occurrences. Second, the legislation would require a protected employee to claim an MDA within three months of entitlement and would require that entitlement to claims be resolved within 150 days after a claim is filed for the first year and 90 days thereafter. This provision will eliminate bookkeeping problems caused by procrastination in filing a claim for an MDA, and enable the Corporation to assess more accurately expected payments for labor protection.

In addition, this legislation would clarify that the period of protection for a protected employee with less than 5 years of service begins to run from the beginning of the first month for which the employee receives an MDA.

Subsection 505(d) of the current law sets out transfer procedures by which the Corporation may require a protected employee deprived of employment to transfer to a bona fide vacancy within the employee's class or craft.

Section 503 addresses restrictions on manpower utilization by including employees in the marine crafts and unemployed Penn Trucks Lines, Inc. truck drivers in the provisions permitting transfer of adversely affected employees to another class, and by offering retraining programs to make the interclass transfer provision meaningful. In addition, the Corporation can make use of an expedited multiple offer procedure to Penn Truck Line and marine craft employees.

Section 504 would redesignate section 509 of the 3–R Act as section 509(a) and increase the amount of funds authorized to be appropriated under title V by $235 million to a new authorization level of $485 million make training and retraining costs incurred by the Corporation under revised section 505(d)(4)(D) reimbursable costs, and confirm existing practice whereby title V funds are used to reimburse the Railroad Retirement Board's unemployment compensation paid to protected employees.

An additional $235 million is authorized to fund the substantially reduced level of benefits afforded by these amendments. This sum would fund the program during a transition period, after which the carriers employing protected employees would be responsible for the payment of benefits without reimbursement.

In addition, this section would add two new subsections to section 509 that impose auditing and reporting responsibilities upon the Association. Section 509 (b) would direct the Association to conduct a program audit of the payment of benefits under title V and evaluate the effectiveness of the provisions of Title V in providing a reasonable level of protection to protected employees and enabling the Corporation to improve management of the protected employees in the workforce. The Association would be afforded access to pertinent documents for the purpose of facilitating its audit and evaluation functions. Section 509(c) would require the Association to transmit an annual detailed and comprehensive report of its periodic audit and evaluation to the Congress and the President within 90 days after the end of each fiscal year.

Section 505 gives Conrail employees the right of first hire on other railroads.

Section 506 requires the single collective bargaining agreements be negotiated with each class and craft and that such negotiations be conducted on a system wide basis.

Section 507 would make the new formulas provided by this title effective August 1, 1980, as already required by a recent Supplement Appropriations bill, P.L. 96–304.

Section 508 makes certain technical amendments.

TITLE VI—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

Section 306 of the Regional Rail Reorganization Act of 1973 is changed by requiring that within the 240 days after the effective date of this Act the Secretary shall determine whether to initiate a proposal for the transfer of all Conrail properties in Connecticut and Rhode Island to another rail carrier in the region. The Secretary shall develop such proposal if the proposed transferee railroad is financially and operationally capable of assuming freight obligations on a financially self-sustaining basis and the transfer would promote a financially self-sustaining rail system in Connecticut and Rhode Island.

The Secretary shall establish a fair and equitable price for proposed transfers. If the special court determines that the proposal is fair and equitable and meets the other requirements of this section, it shall in order to carry out the proposal.

The parties to a supplemental transaction under this section and the representatives of the affected employees are to enter into a new agreement.

TITLE VII—MISCELLANEOUS PROVISIONS

Title VII of the Conference substitute includes provisions related to effective dates, status of pending matters and construction of amendments. In addition, the title provides the annual authorization for the United States Railway Association and funds for Conrail.

Specific provisions are also included to clarify or remedy legislation enacted early this year related to the Rock Island and Milwaukee Railroads.

SHORT TITLE

Senate bill. The Senate bill has as a short title "Railroad Transportation Policy Act of 1979".

House amendment. The House amendment has as a short title "Harley O. Staggers Rail Act of 1980".

Conference substitute. Adopts the "Staggers Rail Act of 1980" as the short title of the Act.

Findings

Senate bill. The Senate bill has no findings.

House amendment. The House amendment has findings which provide an overview of the need for legislation. Among other considerations stated are findings that today, most transportation within the United States is competitive, nearly wo-thirds of intercity freight is transported by modes other than railroads, earnings of railroads are insufficient to generate funds for necessary capital improvements, by 1985 there will be a capital shortfall of between $16,000,000,000 and $20,000,000 and that modernization of economic regulation for the railroad industry with a greater reliance on the marketplace is essential in order to achieve maximum utilization of railroads to save energy and combat inflation.

Conference substitute. The House amendment.

Goals

Senate bill. The Senate bill has no statement of goals except as included in the railroad transportation.

House amendment. The House amendment sets forth specific overall goals to provide for the restoration, maintenance, and improvement of the physical facilities and financial stability of the rail system of the United States.

Conference substitute. The House amendment.

TITLE I

Railroad transportation policy

Senate bill. The Senate bill adds an independent railroad transportation policy to the Interstate Commerce Act to guide the Commission in formulating its rules, regulation, and decisions arising from its administration of the Act.

House amendment. The House amendment is similar to the Senate provision but puts a greater emphasis on the need to minimize Federal regulatory control over railroads.

Conference substitute. Adopts the House amendment with additional policy considerations taken from the Senate bill.

TITLE II—RAILROAD RATES AND INTER-CARRIER PRACTICES

Section 201—Regulation of railroad rates

Senate bill. The Senate bill provides that a rail carrier may establish any rate which yields a revenue to variable cost ratio that is equal to or less than the average ratio of revenue to variable costs established by the Commission. It sets out standards to be used by the Commission in establishing the average ratio and establishes timeframes for action under this section.

House amendment. Section 203 of the House amendment provides that rail carriers may establish any rate for transportation or for services provided by rail carriers unless a rail carrier has market dominance over the traffic. It establishes which parties shall have the burden of proof in complaint and investigation proceedings to challenge the lawfulness of rates or rate increases. The House amendment requires the Commission in determining the reasonableness of rates, to recognize the policy that rail carriers must earn adequate revenues.

Conference substitute. The Conference substitute adopts the House amendment with various changes to conform it to the Senate bill. It allows a rail carrier to establish any rate for transportation unless a rail carrier has market dominance over the transportation, in which case the rate must be reasonable. The definition of market dominance under existing law has not been altered by the substitute, and it is not intended that there be any change in the meaning of the term, nor is any change intended in the Commission's authority to determine market dominance and reasonableness concurrently. However, since other parts of the Conference substitute provide additional rate freedom for rail carriers beyond those found in present law or under existing or proposed Commission regulations, the Commission must revise its market dominance regulations.

In maintaining the term market dominance, in addition to statutory changes designed to provide more rate freedom to rail carriers, the Conferees intend that whenever there is effective competition which will restrain rate increases by the railroads, such competition should continue to function as the regulator of the rate rather than the Commission. Maintenance of the "market dominance" standard is not intended in any way to restrict the ability of the Commission to apply this concept, both in its regulations and individual cases.

Consistent with the new rail transportation policy of this Act, the Conferees intend that competition be recognized as the best control on the ability of railroads to raise rates. The purpose of this legislation is to reverse the decline of the railroad industry, which has been caused, in part, by excessive government regulation. The Conferees believe that by allowing forces of the marketplace to regulate railroad rates wherever possible the financial health of the railroad industry will be improved and will benefit all parts of the economy, including shippers, consumers, and rail employees.

The Conference substitute establishes which party shall have the burden of proof in establishing that a rate is not reasonable and has the effect of maintaining the existing burden of proof in determining reasonableness, i.e. the carrier has the burden of proof in investigation and suspension proceedings and the shipper in complaint cases. The railroad bears the burden of proof when

a rate increase is greater than the 6 percent zone for the first four years, or the 4 percent zone after the first four years. If the rate increase is within the 6 percent or 4 percent zones but is more than 20 percentage points above the jurisdictional threshold or 190 percent of revenue to variable cost whichever is lesser the railroad will also bear the burden of proof if the Commission decides to investigate.

In complaint cases i.e. where the shipper is complaining about an existing rate the burden remains on the shipper to prove that the rate is unreasonable no matter what level the rate is. The Conference substitute does not alter the existing procedure which places such a burden on the shipper.

The shipper must bear the burden of proof when the rate increase is within the 6 percent or 4 percent zones and the rate is not more than 20 percentage points above the jurisdictional threshold or 190 percent of revenue to variable cost whichever is lower. The shipper also bears the burden whenever a rate increase is within the 6 percent or 4 percent zone but the rate increase brings the rate more than 20 percentage points above the jurisdictional threshold or 190 percent of revenue to variable cost whichever is lower and the Commission decides not to investigate.

The Conference substitute adopts the language from the House bill that in determining rate reasonableness to the Commission must recognize the policy of this Act that carriers must earn adequate revenues. The difficult economic situation of much of the railroad industry is one of the reasons for this legislation and the Commission is required to make efforts to ensure that rail carriers earn adequate revenues.

The Conference substitute maintains language similar to existing law which states that variable costs shall be determined by formulas or procedures prescribed or certified by the Commission.

The Conference substitute maintains the requirement that joint rates must be reasonable. The conferees intend that the rate standard for the reasonableness of joint rates shall be the same as for all rates. The establishment of the minimum compensatory joint rate relief in Section 217 of this Act is not intended to mean that such minimum levels relate to the maximum reasonable level for joint rates. A joint rate must be reasonable, as must the divisions of such a joint rate between carriers, and the Commission should not interfere to require joint rates or any carrier's division of a joint rate to be maintained below the rate level permitted by this Act.

Rates may not be established below a reasonable minimum. Rates which contribute to going concern value shall be reasonable and rates which do not contribute to going concern value shall be presumed to be unreasonable. In essence, these provisions strengthen the minimum rate policies of the 4R Act by placing the burden of proof on the party challenging a rate as too low and by expediting the procedures whereby rates which are too low can be raised.

These modifications will ensure that carriers pricing in a manner that meets rational economic standards will not be prevented from improving their economic position by reducing rates. While the Conferees believe there may be circumstances in which rates which do not contribute to going concern value are reasonable, those circumstances are likely to be unusual and once a complainant has shown a rate does not contribute to going concern value, that rate shall be presumed to be unreasonable until the carrier charging the rate bears the burden of showing that the rate is reasonable.

These provisions will ensure that those shippers can protest that a rate is too low and that a carrier is worse off than it would be if the rate were raised. Upon finding this to be the case, the Commission may raise the rate to the minimum level at which the rate benefits the carrier. All shippers as well as the carrier are better off if traffic which makes a contribution moves than if it does not, because the carrier is made financially stronger and need not rely as much on revenue and other shippers.

The Conferees do not intend, however, that rates which are contributing to the going concern value of a carrier should be forced to be raised. The Commission should not restrict the carriage of this beneficial traffic, placing a greater burden on other shippers. This is a decision that is best made by the carrier as it judges the market. Since a carrier has no reason to keep a rate below the most beneficial level, the Conferees have no reason to believe rates will be held below the most beneficial level except by oversight. Accordingly, rates that contribute to going concern value shall be reasonable and the Commission may not require that those rates be raised.

Section 203—Determination of market dominance

Senate bill. The Senate bill establishes a level below which the Commission will have no jurisdiction over railroad rates. The jurisdictional level is equal to the average ratio of revenue to variable costs for all transportation. Until such level is determined by the Commission the jurisdictional level is set at 150% of revenue to variable cost. The Senate bill also repeals 49 U.S.C. 10709, which is the section establishing "market dominance" as a test for Commission jurisdiction over railroad rates.

House amendment. Section 204 of the House amendment retains 49 U.S.C. 10709 and adds a new subsection. The new subsection requires the Commission to find that a rail carrier does not have market dominance over the transportation to which a rate applies if that rate is below a revenue to variable cost ratio of:

160% from the effective date of the Act to September 30, 1981;

165% from September 30, 1981, to September 30, 1982;

170% from September 30, 1982, to September 30, 1983.

175% or the "cost recovery percentage", whichever is lower, from September 1, 1983 to September 30, 1984; and

the "cost recovery percentage" thereafter, except that the "CRP" may not exceed 180% nor be lower than 170%.

The House amendment establishes a "cost recovery percentage" which is the revenue to variable cost level at which the industry is covering its costs as defined in the House amendment. The Commission is required to establish the "cost recovery percentage" annually.

Conference substitute. The Conference substitute adopts the House provision establishing and defining the "cost recovery percentage". It also adopts the House language establishing a jurisdictional threshold of 160% increasing 5% each year through 1984, when the jurisdictional threshold is 175% or the cost recovery percentage, whichever is lower. After September 30, 1984, the jurisdictional threshold is the cost recovery percentage, but it may not be lower than 170% or higher than 180%.

The Conferees have adopted the concept of a jurisdictional level that varies according to the performance of the railroad industry. When the industry is earning revenues which are adequate, it is appropriate for the Commission to have the authority to review rate increases more carefully.

The Conference substitute incorporates a provision which allows a carrier to use present Rail Form A, with adjustments specified by the Commission as appropriate for the type of traffic involved, or its successor as the basis for determining the revenue to variable cost ratio of a rate. The burden is on the carrier to establish on such a basis that the rate is below the jurisdictional level, and the complainant may rebut the showing of the revenue to variable cost ratio according to the Commission formula by evidence of such type and under such burden of proof as the Commission shall prescribe. By such a showing the complainant or the railroad may demonstrate that the revenue to variable cost ratio is different than the one established under adjusted Rail Form A or its successor.

The Conferees do not intend that the Commission alter the jurisdictional threshold by reducing or increasing the items which will be considered as part of variable cost.

The Conferees have adopted a jurisdictional threshold which will deny the Commission jurisdiction over rates which the Commission reviews under present law. The reduction in Commission jurisdiction is adopted because the conferees believe that competition should be the determining factor in railroad rates wherever possible. The railroads' share of intercity freight traffic has decreased dramatically in the past three decades, to the point where most freight traffic can be transported by another mode and is subject to competition.

Section 203—Zone of rate flexibility

Senate bill. The Senate bill establishes procedures and standards for determining a "base rate" and an "adjusted base rate" for purposes of computing rate increases. Carriers are allowed to recover inflation quarterly on individual rates up to the level of the adjusted base rate without challenge.

To determine the adjusted base rate the Commission must publish quarterly a rail cost adjustment factor, which uses an index of Railroad Costs to keep rates equal with inflation.

The Senate bill allows a rail carrier to increase a rate by an amount not exceeding 6% of the adjusted base rate, subject to the restriction that the increase over 5 years under this section not exceed 14%. The Commission is not allowed to suspend any rate increase within this 6% zone, and it may investigate such increase only if it exceeds a revenue to variable cost ratio established by the Commission or if the carrier or carriers proposing the rate increase have achieved an adequate revenue level. Even a rate increase within the 6% zone is subject to challenge on complaint, with the burden of proof on the shipper.

If the Commission decides not to investigate a rate within the 6% zone, it must set forth its reasons for not doing so, after giving consideration to three factors—the amount of traffic transported below variable cost, the amount of traffic which contributes only marginally to fixed cost and the extent to which such rates can be changed, and the impact of the proposed rate increase on national energy goals, taking into account the railroads' role as a primary source of transportation and the need for a sound rail transportation system.

The Commission shall consider, among other factors, when determining the reasonableness of a rate, the amount of traffic which is transported below variable costs, the amount of traffic which contributes only marginally to fixed costs and the extent to which such rates can be changed, and the carrier's mix of rail traffic to determine whether one commodity is paying a disproportionate share of the carrier's overall revenues.

The Senate bill allows the Commission to investigate a rate even if it is within the 6% zone if such a rate is proposed by a carrier or carriers with adequate revenues.

House amendment. The House amendment establishes a base rate for purposes of rate

increases, and an adjusted base rate to account for inflation. It also provides for a 6% zone for each of the four years after the date of enactment, and a 4% zone for carriers without adequate revenue for each succeeding year.

The House amendment does not permit a suspension or investigation of rate increases within the 6 percent or 4 percent zones, if the resulting rate is less than 190 percent of revenue to variable cost of 20 percentage points above the jurisdictional threshold, which ever is lower. It also prohibits the Commission from using rules, classifications, or practice changes to limit rates. It includes a provision that limits the allowable rate on coal movements fitting a particular description.

Conference substitute. The conference substitute adopts parts of the Senate bill and parts of the House amendment. It establishes the base rate as the rate in effect on the effective date of the Act. The 'adjusted base rate' is computed quarterly by means of a "rail cost adjustment factor," as contained in the Senate bill.

A carrier is allowed to change a rate to conform to the 'adjusted base rate' at any time without challenge. A carrier may not receive a rate increase under the adjusted base rate method if the carrier has received an inflation increase through general rate increases or the inflation index thereby already assuring that the rates reflect inflation.

The language of subsection (b) makes it clear that rate increases which do not exceed the adjusted rate base may not be found by the Commission to exceed a maximum reasonable level. The reference to rate increases under subsections (c) and (d) of this section is not intended to suggest that increases under those subsections are presumed to be reasonable. The reasonableness of such rate increases shall be determined under the same standards of maximum reasonableness applicable to any other rate or rate increase.

The conference substitute adopts the 6 percent zone contained in the House amendment. A carrier is free to increase any rate by 6 percent of the adjusted base rate.

During the four year period after the effective date of the Act, the total increase allowed under this section is limited to 118 percent of the adjusted base rate. If a carrier does not take all or a portion of a rate increase in a year, the carrier may take that portion in the next succeeding year.

If a carrier chooses not to take some portion of the allowed 18 percent increase during the first four years, the carrier may take that portion in the next 2 succeeding years, except that the rate increase allowed under this section is limited to 10 percent for each of those years.

The 6% zone does not establish a limit for allowable rate increases by the Commission. If the Commission finds further rate increases do not exceed a reasonable maximum, it may allow such rate increases under the normal standards and procedures of the Act. The 6% zone is established as a procedural mechanism for carriers to change rates without undue regulatory interference. The Conferees believe that the best regulator is the marketplace, and the forces of competition will restrain railroad rates more effectively than federal regulation.

The Conference substitute requires the Commission, when considering a rate increase within the 6% zone and below the point 20 percentage points higher than the jurisdictional level or 130% of revenue to variable cost, whichever is lower, to give due consideration to whether a carrier proposing a rate increase has attained adequate revenues, 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. This provision is intended to apply only for the four years that the 6% zone applies, and only to those rate increases which are within the 6% zone and below the point 20 points higher than the jurisdictional level or 130% of revenue to variable cost, whichever is lower.

The Conferees intend that the Commission give due regard to two things, whether a rate increase would mean excessive profits, and the need for a rate increase in light of the carrier's revenue position taking into account the policy of this Act that inadequate revenue carriers make adequate revenues. This language is not intended to imply that excessive profits for inadequate revenue carriers are reasonable.

The Conferees understand that the Commission presently considers the adequacy of revenues in its determination of reasonableness, and the Conferees intend that the Commission continue to consider the adequacy of revenues in its determination of reasonableness. The Conferees intend that the Commission continue to look carefully at the adequacy of a rail carrier's revenues when considering whether a rate is reasonable and to consider all the other factors which it presently considers in determining reasonableness.

The Conference substitute adopts the 4% zone from the House amendment. A 4% zone is established free from suspension, and free from investigation if the resulting rate is below 190% or 20 percentage points above the jurisdictional threshold, whichever is lower. A carrier is allowed 4% of the existing rate as an increase without undue regulatory interference.

This zone is limited to carriers without adequate revenues. Carriers with adequate revenues are not allowed this 4% zone on single line rates, and are not allowed the zone on joint line rates unless the Commission determines in its rulemaking under this provision that it cannot establish rules preventing rail carriers with adequate revenues from taking advantage of the 4% zone without denying the zone to carriers without adequate revenues. The conferees expect the Commisson to establish the rules for determining how the 4% zone is to be applied in conformity with the policy of this Act, which is designed to provide increased regulatory freedom and to allow carriers to earn adequate revenues.

Neither the 4% or the 6% zone is intended to create any presumptions about the rate increases beyond the zone. The Conference substitute states unequivocally that a rate increase beyond the zone establishes no presumption of market dominance or reasonableness.

The Conference substitute adopts the House amendment which establishes the point at which the Commission may investigate a rate increase within the 6% or 4% zones. The point is 20 percentage points above the jurisdictional threshold or 190% of revenue to variable cost, whichever is lower. For example in the first year the jurisdictional threshold is 180%, and the point at which the Commission may investigate is 180%.

The Conference substitute adopts the Senate provision which requires the Commission to set forth its reason for not reviewing a rate increase or new rate. The Commission shall give due consideration, in its decision whether or not to investigate, to the following factors:

1. the amount of traffic which is transported below going concern value, and efforts made to minimize such traffic;

2. the amount of traffic which contributes only marginally to fixed costs; and

3. the impact of the proposed rate increase on the attainment of the national energy goals and the rail transportation policy of this Act, taking into account the railroads' role as a primary source of energy transportation and the need for adequate revenues to achieve a sound rail system.

The Conferees have used the term "going concern value" in the first consideration in place "variable cost," to eliminate any confusion about what is intended. Railroads should not be carrying traffic which is losing money but in a competitive environment railroads should be attracting whatever traffic they can at the lowest rates that will attract that traffic. There should be no incentive to prevent such pricing, which is to the advantage of the shipper and the consumer.

The Conferees have added to the third consideration the rail transportation policy of this Act. The national energy goals, which include a reduction of dependence on foreign energy sources and the encouragement of fuel efficient forms of transportation within the United States, are compatible with the transportation policy of this Act. To reduce dependence on foreign energy sources this country must stimulate utilization of its abundant, idigenous coal reserves. For coal to be a viable alternative, we must have a sound rail transportation system capable of handling such coal efficiently and economically. At a minimum the rail system will need to invest over $5 billion over the next 4 years to maintain a system adequate for increased coal use. Without such an investment the national energy policy of decreasing reliance on foreign energy sources will never be achieved.

Decisions whether to investigate a rate are not presently reviewable in court. The conferees intend, and the Act specifically states, that a decision whether or not to investigate remains not reviewable.

The Conference substitute adopts the language of the Senate bill specifying three factors among those already considered by the Commission which the Commission must consider in determining the reasonableness of a rate, with changes. As in the previous section the term "going concern value" is substituted for "variable costs." In the third consideration, the word "disproportionate" is changed to "unreasonable". It requires the Commission to consider evidence of the factors listed.

The Conference substitute adopts the House provision limiting coal rates which meet a specific description. This provision deals with the celebrated and extended dispute over the freight rate for rail transportation of coal to a municipally owned utility in San Antonio, Texas. This utility decided voluntarily in 1973 prior to the oil embargo, and prior to any legislative requirements concerning use of alternate fuels, to convert an oil/gas unit then on order to coal and to build this and an additional unit on an accelerated basis, resulting in the displacement of oil and gas equivalent to more than 50 billion cubic feet of gas on an annual basis. Unfortunately the appropriate rate for the transportation of coal to these new plants has been the subject of dispute and protracted litigation. Due to the unique circumstances of the San Antonio situation, this provision imposes certain short term limitations on the rate level for the San Antonio coal movement. The purpose of this provision is not punitive and the rate specified for such a coal movement shall have no effect on any decision of the Commission or a court, and evidence of the rate or this section shall be inadmissible in any proceeding.

The Conference substitute adopts the House provision. New section 10709(h) makes it clear that the Commission may not use any of its residual powers to regulate rates, rules, classifications, and practices as

tools to interfere with the rate freedom provided by the Staggers Rail Act. The Conferees intend that a pratcical rule or classification which has the effect of resulting in an increased rate for transportation shall not be found unreasonable unless, in the absence of its affect on rate levels, it would itself be unreasonable.

Section 204—Transportation of recyclable materials

Senate bill. The Senate bill requires that rates for recyclable or recycled materials be no higher than the average revenue to variable cost ratio of all rates for railroad transportation. Any rate which exceeds that threshold shall not be required to bear further rate increases.

House amendment. No provision.

Conference substitute. The Conference substitute adopts the Senate bill with certain changes. The substitute excludes recyclable or recycled iron and steel from this provision. Rates which are currently above the threshold would be prohibited from increases until such time as the rate falls below the average revenue to variable cost threshold. The standard for establishing the average revenue to variable cost threshold is the standard used in the Senate bill.

Section 205—Rate regulation proceedings; adequate revenues

Senate bill. The Senate bill required the Commission to submit to Congress, within one year after the enactment of the act, a study on the desirability of using return-on-investment as a threshold standard for jurisdiction over the reasonableness of rail carrier rates. The Commission was also required to submit a report to the Congress every three years which analyzed the revenue needs of carriers and made appropriate recommendations.

House amendment. The House amendment requires the Commission to commence and conclude within 230 days of enactment a proceeding to determine whether, and to what extent, product competition should be considered in determining the reasonableness of rail carrier rates. For purposes of only this proceeding product competition is defined in the amendment. This definition is not intended to be taken into account in any other Commission or court proceeding dealing with competition from alternative sources or types of commodities. The amendment provides that on the basis of the study the Commission may find that in determining the reasonableness of a rate, product competition should be given the same or greater weight than in current proceedings or proof of product competition should be given greater or conclusive weight.

The section is not to be construed as requiring any change in the Commission's present standards concerning reasonableness and is not to influence in any way the meaning of market dominance.

The House amendment also requires the Commission to submit to Congress within three years of the effective date of the Act recommendations as to the threshold level for Commission jurisdiction over the reasonableness of a proposed rail carrier rate.

The House amendment also requires that the Commission within 180 days after the effective date of the Act establish standards for determining what constitutes adequate revenues under section 10704 of the Act and to report to the Congress, within 180 days after the effective date and annually thereafter, which carriers were earning adequate revenues.

The House amendment makes the rail carrier rate level resulting from any case pending in any Federal court on July 22, 1980, the base rate for purposes of determining permissible rate increases.

Conference substitute. The Conference substitute adopts the provisions from the House amendment requiring the Commission to initiate a proceeding within 230 days of the effective date of the Act to determine whether and to what extent, product competition should be considered in determining the reasonableness of rail carrier rates. The substitute amends the House amendment to underscore the fact that the ICC proceeding shall not be evidence in a Commission or court proceeding regarding the scope of the market dominance concept.

The Conferees intend to exclude from any rule adopted under this subsection existing supply contracts, or for two years, whichever is less. The Conferees also intend that the Commission, in its rule-making, look at the existence of long-term contracts in determining how to apply product competition. Product competition means the availability to a consignee at a competitive delivered cost and in sufficient quantities of products or commodities which are of the same type as the commodity or product to which the rate applies without regard to whether such products or commodities are available from the same or a different origin as those to which a rate applies. An example of where product competition does not exist is a situation in which a particular automobile company manufactures bumpers at Plant A and ships them to its Plant B for assembly because it cannot use another automobile company's bumpers.

The Conference substitute amends existing Section 10704(a)(2) of Title 49 clarifying that the Commission has the authority to revise its standards and procedures for determining revenue adequacy as necessary; by directing the Commission to conclude a proceeding under Section 10704(a)(2) within 180 days after the effective date of the Act; and on the basis of standards and procedures under Section 10704(a)(2) to determine which rail carriers have adequate revenues within 180 days of the effective date of the Act and on an annual basis thereafter.

Section 206—Inflation-based increases

Senate bill. The Senate bill provides a free zone for the recovery of inflationary cost increases.

House amendment. The House amendment allows the Commission to establish a percentage rate increase or rate index for rail carriers in order to compensate for inflation. Such percentage increase or index may be applied carrier by carrier or industry wide. The percentage rate index allows Commission to establish a range within which carriers may increase rates differently for different commodities, but recovering no more than total inflation.

Conference substitute. The Conference substitute provides that the Commission may establish a percentage rate increase or index to allow carriers to cover inflation. Such an index or percentage may not be necessary, since carriers will be free to recover inflation on individual rates without challenge. In the event that carriers find they are unable to keep up with inflation, and the Commission believes that it must prescribe a general mechanism to allow carriers to cover inflation, this percentage increase or index is allowed. The provision make specific reference to the policy section of the Act which discourages the automatic pass-through of inflation through increases of general applicability.

Under this provision, the Commission is allowed to establish a range of permissible increases, and the carriers may take increases within that range. The total increase in revenue may not account for more than is necessary to cover the total of inflationary cost increases.

Section 207—Investigation and suspension of rates

Senate bill. The Senate bill requires the Commission to complete a proceeding when a suspension has occurred within five months, unless it reports to the Congress that it is unable to do so, in which case it may take an additional three months.

House amendment. The House amendment requires the Commission to act within five months if a suspension has occurred, and provides an additional 3 months if the Commission reports to the Congress that it is necessary. The House amendment also revises the standards under which the Commission may suspend a rate by adding the word "substantially" to the requirement that the Commission find that it is likely that the complainant will prevail on the merits and by adding a new standard which requires the Commission to find that because of the peculiar economic circumstances of the protestant, he is not protected by the refund provisions. The burden is on the protestant to prove that the standards are met.

The House amendment also provides for an accounting and refunds to shippers where a proposed rate increase is suspended, and to rail carriers if the proposed rate increase is suspended and later found to be reasonable.

Conference substitute. The Conference substitute adopts the House amendment with a modification with respect to refunds. The substitute makes suspension more difficult.

Section 208—Contracts

Senate bill.—The Senate provision clarifies the status of contract rate and service agreements in an effort to encourage carriers and purchasers of rail service to make widespread use of such agreements. In addressing concerns of small shippers the Senate provision also limited the percentage of equipment a rail carrier could dedicate to contract service. This limitation was designed to insure that the carriers always had sufficient equipment to meet common carrier obligations. The Senate bill limits the number of cars a carrier can dedicate to contract service to 35 percent of the carriers' capacity by major car type. A further limitation was imposed on large shippers, again to protect the small shippers' ability to obtain sufficient cars, with respect to contracts between Class I carriers and shippers which originate an average of 1,000 cars or more per year by major car type during any preceding three-year period, no more than 40 percent of that coverage could be used for contracts. The remainder of the shipper's car needs would be supplied by the carrier under the common carrier obligation as with all other non-contracting shippers. The smaller shippers, i.e. one who originates less than 1,000 cars per year (based on a 3 year average prior to the contracting period) could contract for 100 percent of the shipper's needs.

Further, the Commission may order a carrier to provide rates and services similar to those in any contract which it finds the carrier did not make available to a similarly situated shipper.

House amendment.—The House amendment permits carriers to enter into contracts with shippers. Once approved, a contract is not subject to challenge.

First, carriers may enter into contracts filed with the Commission (along with summaries to be made public) unless the Commission finds that the contract unduly impairs the ability of the carrier to fulfill its common carrier obligation to a complainant, unreasonably discriminates against a port or, in the case of agricultural commodities, the carrier has unreasonably discriminated the complainant a similar contract under similar conditions or the contract constitutes a destructive competitive practice.

Second, the Commission may begin an investigation within 30 days of the filing of a contract on its own motion or on complaint. The Commission has 30 days following the initiation of a proceeding to approve the contract. If the Commission fails to act, then the contract is [illegible]

Third, if the Commission determines that a carrier has refused to provide an agricultural shipper with a similar contract, the Commission may order the carrier to enter into such a contract with appropriate adjustments.

Fourth, once a contract has been approved by the Commission, the Commission may not require violation of the contract except to require compliance under the Commission or any court under the provisions of this subtitle. The exclusive remedy for breach of a contract entered into under this section is an action in a State or U.S. district court, unless the parties otherwise agree.

Fifth, during the first three years after passage of the Act, a carrier may enter into contracts for the transportation of agricultural commodities involving the utilization of carrier-owned or leased equipment not in excess of 40 percent of the capacity of such carriers' owned or leased equipment by major car type, except with respect to a contract with a shipper of over 1,000 cars or more per year for the prior three years in which case the carrier may contract for more than 40 percent of the average equipment utilized in the three year period. The Commission may raise these limits.

Conference substitute. The conference substitute adopts the Senate amendment with several changes. The percentage of limitation on cars for contracts for agricultural commodities, is expanded to include forest products and paper and is not limited to three years after passage of the Act. However, the Commission, as well as any other party, may initiate a proceeding to modify this percentage limitation. Unreasonable discrimination with respect to agricultural, forest product or paper shippers is defined for purposes of this section as that term is used in section 10741 of the Interstate Commerce Act. A similar provision with respect to ports from the House amendment is retained. The conferees stress that the establishment of contract rates is a significant aspect of the new freedom allowed to carriers to market rail transportation more effectively. Therefore, the grounds for disapproving contracts have been intentionally limited.

The provision establishes a separate class of rail service and thereby makes carriers entering into such contracts both common carriers and contract carriers. Once a contract is approved by the Commission or goes into effect because the Commission has not acted within the specified time limits, the service provided under the contract is exempt, subject to the specific limitation of section 11128, from all regulation and all of the requirements of the Interstate Commerce Act. However, the Commission is given the specific authority to limit the right of a rail carrier to enter into future contracts if it determines that such additional contracts will impair the ability of the rail carrier to fulfill its common carrier obligations under Section 11101 of the Act. Once contracts are approved under this section, they are to be enforced in the courts and not at the Commission.

Shippers who do not elect to enter into contracts, or are unable to do so, are assured that carriers will have the same common carrier obligations as in existing law. The percentage limitation on equipment for agricultural commodities, forest products and paper result from problems experienced in providing adequate numbers of cars for the shipments of these products and are intended to ensure that a carrier can meet its common carrier obligations. These limits are to be apply to any type of car which could practicably be used for shipping agricultural commodities, forest products or paper. However, they are not intended in any way to imply a limit on a carrier's ability to contract with respect to other types of equipment.

While the Conferees intend to encourage shippers to contract they recognize the difficulty that small shippers may have in negotiating contracts, and therefore, the Conference substitute adopts the Senate provision establishing a railroad contract rate advisory service. The Conference substitute also includes the Senate provision which gives the Commission the ability to order a carrier to provide rates and services similar to those in any contract which it finds the carriers did not make available to similarly situated agricultural shippers. Finally, the Conference substitute includes a provision which allows agricultural shippers to challenge a contract on the grounds that the proposed contract constitutes a destructive competitive practice. It should be noted that these provisions were included in recognition of the fact that smaller shippers are particularly concerned about the market power of their larger competitors once the contract rate provisions are put into effect. It is the intention of the Conferees that the Commission carefully review this aspect of the competitive situation in approving contracts.

The existing Federal antitrust laws apply to this section.

Section 209—Demand sensitive rates.

Senate bill. The Senate bill amends 49 U.S.C. 10727 to provide for the filing of a demand-sensitive tariff in response to explicit or anticipated fluctuations in demand for rail services. The tariff would apply to a maximum and minimum rate regulation. The Senate bill specifically excluded grain from this provision.

House amendment. The House amendmend repealed 49 U.S.C. 10727 because of the concerns raised by agriculture interest groups about the way demand-sensitive tariffs had been implemented. The provision was originally included in the 4R Act to provide greater car utilization by encouraging rail shippers to ship in off-peak, low demand periods. The repeal of the demand-sensitive tariff authority should not be construed by the Commission as a resolution of the car utilization problems. The Commission has other ways to abate the serious problem of the declining car utilization in the rail industry.

Conference substitute. The Conference substitute adopts the House provision. The conferees direct the Commission to explore alternative methods of improving car utilization and making railroad prices and services more responsive to market conditions instead of artificial regulatory restraints. However, the Commission is on specific notice not to contravene the policy set out by Congress which is clearly to prevent demand-sensitive rates by any means to apply to agricultural commodities.

A letter from Chairman Gaskins on the Commission's existing authority in this area is attached as an appendix.

Section 210—Phaseout of capital incentive rates

Senate bill. The Senate bill repealed 49 U.S.C. 10729, which provides that if a capital incentive rate is approved by the Commission, such rate not be found unreasonable or discriminatory for 5 years. A capital incentive rate is based on an investment by a shipper, railroad or interested third party of $1 million or more in rail-related equipment or facilities. The intent of this provision was to encourage the negotiation of rates reflecting individualized and innovative service and to create stability which would promote large investments. Regulatory complexities and ambiguities have frustrated the intent of this section. Moreover, the explicit authorization of contracts makes this section unnecessary. Capital-incentive rates filed not less than 90 days before the date of enactment would not become effective, but rates filed before that date remain effective subject to the 5-year limitation.

House amendment. The House amendment repeals the capital-incentive rate provision, but preserves all capital-incentive rates from challenge as unreasonable or discriminatory if filed prior to the effective date of this Act, subject to the 5-year limitation from the date the rate became effective, unless the parties otherwise agree. The Commission may, during the period the rate is in effect, order the rate revised to a level equal to the incremental cost of providing the transportation, if the Commission finds that the rate level in effect reduces the going concern value of the rail carrier.

Conference substitute. The Conference substitute adopts the House amendment.

Section 211—Permissive limited liability

Senate bill. The Senate bill amends 49 U.S.C. 10730 with respect to released rates. Under existing law the Commission is authorized to permit released rates in cases where rates based on a declared or released value would be just and reasonable under the circumstances surrounding the transportation. Under this section no carrier may publish rates based on the declared or agreed value without specific authority from the Commission.

Under the Senate bill, rail carriers may establish released value rates subject to the provisions and procedures set forth in chapter 107. The effect of this change is to authorize the filing of such rates without prior Commission authorization. In many instances, shippers have the resources to obtain insurance at a reasonable price and to bear at least a portion of the risk of lost damaged cargo. Carriers and shippers should be allowed to agree on a fair rate which explicitly takes into account the risk of loss or damage.

Rail carriers should be able to negotiate for the type of service required and the rate to be paid for that service. It is with that purpose in mind that this subsection has been added to section 10730—to permit the establishment of released rates as an additional option available to shippers and rail carriers. Full value rates will of course continue in effect for the use of those shippers and receivers which choose not to utilize released rates established and filed under this provision or agree to other terms as part of a contract for services.

House amendment. The House amendment provides that rail carriers may establish rates for the transportation of property under which the liability of the carrier for such property is limited to a value established by a written declaration of the shippers or by a written agreement between the shipper and carrier, and such agreement may provide for a specified deductible for any claim against the carrier for loss or damage to the property or delay in the transportation of such property. The ability to use released rates including the deductible in an agreement, gives both the shipper and carrier greater flexibility with respect to negotiation of rates without harrassment and delay at the Commission.

The House amendment changes provisions of the Carmack Amendment, 49 U.S.C. 11707 concerning the availability of special damages, comparative negligence standards for liability and the time period when claims must be filed with the carrier and where

actions must be instituted against a carrier under the Carmack Amendment.

Conference substitute. The Conference substitute adopts the House provision with respect to released rates, including deductibles, but drops the references to the Carmack Amendment, except for venue provisions. It adds a study with respect to the need for the Carmack Amendment. At the insistence of several shipper groups, explicit statutory language prohibiting special damages was eliminated because special damages are not permitted under the Carmack Amendment.

A provision regarding the changing of the existing case law that makes the railroad almost strictly liable, unless it can establish that it was neither negligent nor not liable under certain recognized absolute defenses, was dropped and has been included in the study. While the study is being completed, carriers are not prohibited from arguing to the courts that the Carmack Amendment was intended to codify common law standards and therefore, a comparative negligence standard ought to be adopted.

The Conference substitute adopts the House amendment with respect to changes in venue for Carmack Amendment cases. Hereafter, cases may only be brought in a court having jurisdiction over the originating carrier's point of origin, against the delivering carrier in a court at the principal place of business of the person entitled to recover against the carrier or having jurisdiction over the point of destination, or against an originating, intermediate or delivering carrier in a court having jurisdiction over the point where the loss or damage is alleged to have occurred. Because existing law permits an action wherever the carrier operates, venue is virtually uncontrollable and frequently, inconvenient.

The Carmack Amendment was enacted at a different time with different factors affecting rail carriers. Among other issues, the studies should examine whether special damages are being recovered from rail carriers, and, whether a rail carrier ought to be responsible for such damages in the absence of a clear showing, by written agreement, that the carrier was made aware of certain foreseeable risks and had an opportunity to make appropriate arrangements.

Simularly, the studies should consider whether it makes sense in 1980 to hold a carrier liable for 100 percent of the damages even if the carrier was only 10 percent at fault. Current law makes a carrier totally liable unless the carrier can show that it was completely free from fault and that the shipper's negligence was the sole cause of the damages. The study should consider whether it is appropriate to follow the recent trend among the states to adopt comparative negligence standards, requiring each party to bear the costs of its own negligence. More than a majority of states have departed from prior law making liability an all or nothing alternative. The study should determine whether similar policy goals would require similar legislation with respect to common carrier obligations.

The studies should also address other issues raised by the Carmack Act, including the recovery of attorneys' fees, appropriate time limits, the feasibility of a "no-fault" system, and proper venue requirements.

Section 213—Rate discrimination

Senate bill. No provision.

House amendment. The House amendment amends section 10741 to state that differences between rates, rules, or practices which result from different services do not constitute a violation of this section. The amendment specifically exempts surcharges, approved contracts, separate rates for distinct services under 10728, rail rates applicable to different routes and customer solicitation expenses from being challenged as discriminatory. The Commission retains its existing authority to regulate rate relationships between and within ports.

Conference substitute. The Conference substitute adopts the House amendment. The Conference substitute will help ensure that, with the exception of the right of ports to complain of unjust discrimination between and within ports and the special remedies provided for certain unjustly discriminatory contracts in new section 10713, claims of unjust discrimination may not be used to hamper the development of sound economic rate and service relationships. The conferees also expect the Commission, to exercise its remaining power under section 10741 only where it is needed to prevent abuses of market power where discrimination cannot be justified by differences in demand for services or costs.

The conferees intend that the reference to separate rates or distinct rail services in this section shall not affect the *Wichita* doctrine.

Section 213—Exemptions

Senate bill. The Senate bill amended section 10505 to provide that, where any provision of the Interstate Commerce Act is not needed to protect shippers from the abuse of market power, the "limited scope" restriction in the original section 10505 would not apply. The Senate bill also removed the requirement that a proceeding be held in all cases before an exemption is granted.

The Senate bill requires the Commission to provide an exemption from regulation when it finds that regulation is not necessary to carry out the transportation policy and the transportation or service is either of limited scope or regulation is not needed to protect shippers from the abuse of market power. The Commission may not issue an exemption which will substantially lessen competition and coordination between water and rail carriers. No exemption order shall operate to relieve railroads of their common carrier liability for claims under 49 U.S.C. 11707.

House amendment. The House amendment amends section 10505 of the Interstate Commerce Act and provides that the Commission shall exempt a person or transaction from one or more provisions of the Act where it is not necessary to carry out the rail transportation policy and where (1) the transportation or service is of a limited scope or (2) the application of a provision is not needed to protect shippers or receivers where there is an absence of effective competition or (3) where there is effective competition. The House bill, like the Senate bill, removed the requirement that a proceeding be held in all cases. The Commission is charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards.

The amendment places certain limits on the Commission's authority to grant exemptions. First, section 10505(e) provides contractual terms for liability and claims consistant with section 11707. This limitation does not affect the ability of a carrier to offer alternative terms nor give the Commission the authority to require either any specific level of rates or services based on Section 11707, nor does it require the filing of those terms with the Commission. Second, the exemption authority may not be used to relieve a carrier of its obligation to protect the interests of employees. Third, under section 10505(f) the exemption authority may not be used to authorize intermodal ownership otherwise prohibited by this title.

Conference substitute. The conference substitute combines the Senate and House provisions. The bill permits exemptions wherever regulation is not needed to prevent abuses of market power, regardless of the presence of effective competition. The policy underlying this provision is that while Congress has been able to identify broad areas of Commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemptions from remaining regulation. The conferees anticipate that through the exemption process the Commission will eventually reduce its exercise of authority to instances where regulation is necessary to protect against abuses of market power where other federal remedies are inadequate for this purpose. Particularly, the conferees expect that as many as possible of the Commission's restrictions on changes in prices and services by rail carriers will be removed and that the Commission will adopt a policy of reviewing carrier actions after the fact to correct abuses of market power.

For these reasons we also expect that except to the extent necessary to comply with subsections (e) and (g) of section 10505 of title 49 U.S.C. as amended by the Staggers Rail Act of 1980, an exemption order issued by the Commission prior to the effective date of the Staggers Rail Act of 1980 shall remain in full force and effect unless revoked pursuant to subsection (d) of section 10505 of title 49 U.S.C. as amended.

Section 214—Intrastate rates

Senate bill. The Senate bill amends section 11501 to reaffirm both that the Commission's power in this area is only as otherwise authorized by this title and that the States' power cannot conflict with the Federal regulatory scheme.

First, it amends section 11501 to limit the Commission's authority to prescribe a rate or effect other action which is inconsistent with its rate regulatory authority as limited by the act.

Second, it reaffirms that where the Commission has withdrawn its jurisdiction to regulate, the State could not assume such jurisdiction.

Third, it provides that to the extent States do have jurisdiction, they are to regulate in accordance with the transportation policies set forth in the act.

Finally, it shortens the time in which a failure by the State to act on an intrastate rate allows Commission action.

House amendment. The House amendment amends sections 11501, 10103 and 10501 of the Interstate Commerce Act by exempting rail carriers from the provisions of section 11501(a) and by adding provisions making the Commission's and certified States' jurisdiction over intrastate and interstate rail carrier rates, classifications, rules and practices and the remedies provided by the Act exclusive.

First, it amends section 11501(a) of the Interstate Commerce Act to exempt rail carriers from present provisions for Commission jurisdiction over intrastate carriers.

Second, it amends section 11501 by adding new provisions which provide that only State authorities whose standards and procedures have been certified by the Commission may exercise jurisdiction over intrastate rail rates, classifications, rules and practices. Intrastate rail transportation not subject to the jurisdiction of a certified State authority is subject to the jurisdiction of the Commission. In no event may a State authority exercise jurisdiction over general rate or inflation-based rate increases. Decisions of State authorities may be appealed to the Commission if not in accordance with this subtitle.

Third, it amends section 10103(a) to make explicit that where the Interstate Commerce

Act provides an exclusive remedy, such remedy is not in addition to remedies under another law or at common law.

Finally, it amends section 10501 by adding a new paragraph providing that the jurisdiction of the Commission and of certified State authorities over rail transportation, as well as the remedies provided with respect to rail rates, classifications, rules and practices are exclusive.

Conference substitute. The Conference substitute adopts the House amendment, except that the Commission's power to adjust intrastate rates is retained in the event that actions by certified states impose a burden on intrastate commerce. The conferees' intent is to ensure that the price and service flexibility and revenue adequacy goals of the Act are not undermined by state regulation of rates, practices, etc., which are not in accordance with these goals. Accordingly, the Act preempts state authority over rail rates, classifications, rules and practices. States may only regulate in these areas if they are certified under the procedures of this section.

The remedies available against rail carriers with respect to rail rates, classifications, rules and practices are exclusively those provided by the Interstate Commerce Act, as amended, and any other federal statutes which are not inconsistent with the Interstate Commerce Act. No state law or federal or state common law remedies are available.

Section 215—Business entertainment expenses

Senate bill. No provision.

House amendment. The House amendment adds a new section 10751 to subchapter III of chapter 107 of title 49 U.S.C. to provide that business solicitation or entertainment expenses incurred by rail carriers do not constitute illegal rebates or discrimination, if these expenses would be legal when incurred by a non-Commission regulated entity. The House amendment treats rail carriers in a similar manner as other businesses.

To discourage excessive solicitation or entertainment expenses, these expenses are not to be taken into account in determining the cost of service or the rate base for rate regulation purposes.

The Commission is directed to institute a rulemaking proceeding to establish standards and guidelines for authorized expenses under this section.

Conference substitute. The Conference substitute follows House amendment. It amends Section 10751 of Title 49 U.S.C., which was added by the Motor Carrier Act of 1980, by striking out "other than transportation by rail". In addition, Subsection (b) of Section 215 makes clear that Section 10751 should be construed so as to include any permissible business expense that was incurred prior to the effective date of this Act (other than expenses on which a penalty has been paid) or that is incurred on or after such date.

Section 216—Efficient marketing

Senate bill. The Senate bill amends 49 U.S.C. 10762(c)(3) to permit new or increased rates to become effective 20 days after the notice of such rate is published and filed, but delayed the effective date of this change for 60 days. The Senate bill also leaves contracts and demand-sensitive tariffs subject to the provisions of existing law that require that tariffs shall not become effective on less than 30 days notice.

House amendment. The House amendment reduced the period after which tariffs increasing rates can become effective to 10 days and the period after filing tariffs which reduce rates can become effective to 5 days after filing. The House amendment also permits the Commission to reduce the notice if cause exists. The House amendment establishes a separate filing procedure for contracts in the contract section.

Conference substitute. The Conference substitute permits tariffs increasing rates to become effective upon 20 days notice and tariffs reducing rates to become effective upon 10 days notice. The Conference substitute does not change existing law which permits the effective dates of tariffs to be reduced upon cause shown.

Section 217—Joint rates

Senate bill. The Senate bill authorizes a carrier to publish a surcharge without the concurrence of other carriers if the surcharge is applied in equal dollar amounts to all of the routes participated in by that carrier between the same points and, if an increase in joint rates, to all of its competing single-line routes between each such origin and destination. The change in revenues shall accrue solely to the carrier applying the surcharge.

The proposing carrier must give 45 days' notice to other carriers party to the joint rate.

A carrier which participates in any route subject to a surcharge may by tariff cancel the application of such surcharge to any route if such carrier demonstrates that, under the applicable joint rate without the surcharge or under a new lawful rate or division concurred in by the carrier, the surcharging carrier's revenues for its participation over such route are less than 110 percent of its variable costs.

A carrier may not apply a surcharge unless, for 1 year prior to the surcharge, it has participated in all increases in rates of general applicability agreed to by other parties to the rates.

Only the carrier proposing a surcharge shall be required to defend the surcharge, and the lawfulness of the surcharge shall be determined without regard to the amounts received and the services performed by other carriers party to the joint tariff to which the surcharge is applied.

A rail carrier may, without the concurrence of any connecting rail carrier, publish surcharges applicable to traffic originating or terminating upon any line of railroad originating and terminating less than 3 million gross ton miles of traffic per mile in the most recent calendar year for which traffic data are available if, prior to the application of any such surcharge, the through charges applicable to traffic to and from any such line do not provide the surcharging carrier revenues adequate to cover 100 percent of the reasonably expected costs (including the cost of capital) of continuing to operate the line involved. The change in revenues resulting from any such surcharge shall accrue solely to the carrier applying the surcharge.

A carrier may cancel the application of a joint rate to any through route without the concurrence of any connecting carrier unless another carrier party to the rate over that route demonstrates that the cancelling carrier's share of revenue under the canceled rate is not less than 110 percent of the cancelling carrier's variable cost of providing service over that route.

The carrier would be required to provide an estimate to class III carriers or other parties upon a showing of good cause in developing necessary data to challenge surcharges. The Commission's Special Counsel is authorized to assist Class III carriers in actions brought under this section.

House amendment. Consistent with the goal of preserving a financially stable, private sector rail system set forth in section 3 of the amendment, section 301 establishes procedures by which rail carriers which do not earn adequate revenues under existing joint rates and divisions can surcharge such rates or cancel their application to particular routes without the concurrence of other carriers. The purpose of this section is to insure that no rail carrier will be compelled to carry goods unless its share of the revenues from the joint rate, including any surcharges, is at least 110% of the carrier's variable cost of providing the particular services involved. In addition, for light density lines owned by a single carrier which carry less than 3,000,000 gross ton miles per mile of traffic, this section allows such a carrier to apply surcharges to recover in full its reasonably expected costs of providing services over such lines.

With respect to a particular route to which a surcharge has been applied under subsection (a) or to which the application of a joint rate has been cancelled, section 301 allows connecting carriers who participate in the route or shippers who demonstrate that they have no competitive alternative to the route to respond by demonstrating that the existing joint rate is sufficient to provide revenues to the surcharging or canceling carrier in excess of 110% of that carrier's variable cost. Alternatively, the connecting carrier may agree to a new division or new lawful rate or the carrier or a shipper in an affected route may petition the Commission to establish a new rate which is sufficient to produce revenues equal to 110% of the variable cost to the carrier proposing the surcharge or cancellation. Under either alternative, the surcharge would be cancelled or the application of the joint rate continued for that particular route. A surcharge to a light density line may be challenged by a shipper who has no competitive alternative to such line on the basis that the revenues generated exceed the surcharging carrier's reasonably expected costs of providing services over the particular line or that the shipper is bearing an unreasonable proportion of the reasonably expected costs. Special provisions are also included in section 301 to protect class III carriers from unfair competition as a result of action taken by another carrier under this section.

Section-by-Section Analysis

Section 301. This section amends chapter 107 of title 49 by adding a new section 10705a which provides standards and procedures for surcharging an existing joint rate for cancelling the application of a joint rate to a particular route to increase revenues for rail carriers earning inadequate revenues from existing joint rates and divisions.

Subsection (a) authorizes a carrier to apply a surcharge increasing or decreasing the joint rate for a particular movement between two points without the concurrence of other parties to the joint rate provided the surcharge is applied in equal dollar amounts to all routes for the movement under the joint rate in which the surcharging carrier participates and, if the surcharge increases the rate, to all single line routes of that carrier between the same points. A connecting carrier may cancel the application of a surcharge to a route in which it participates by demonstrating that the surcharging carrier's revenues over that route without the surcharge exceed 110 percent of the surcharging carrier's viable cost or by putting into effect a new division or a new lawful rate which provides the surcharging carrier 110 percent of its variable cost. In addition, a shipper showing that it has no competitive alternative to that route and a carrier in the affected route, may petition the Commission to cancel the application of a surcharge to a particular route by showing that the surcharging carrier's revenues with the surcharge exceed 110 percent of variable cost. The Commission must then authorize the surcharging carrier to apply a surcharge sufficient to generate revenues equal to 110 percent of the surcharging carrier's variable cost. The right of surcharge may be exercised by a particular carrier only once a year for a particular movement and only if the carrier has participated in all

generally applicable rate increases to that joint rate for one year prior to the surcharge.

Subsection (b) authorizes a surcharge applicable to traffic which originates or terminates upon a light density line, owned by a single carrier, which carries less than 3,000,000 gross ton miles of traffic per mile per year. The surcharge may be applied (in different amounts to different traffic in order to optimize market relationships if necessary) whenever the revenues under existing rates do not cover 110% of the carrier's variable cost of transporting traffic to or from the line plus 100% of the carrier's reasonably expected costs (including the cost of capital) of operating the line. A shipper located upon a light density line to which a surcharge is applied may petition the Commission for two kinds of relief: (1) if it is established that the revenues generated by the surcharge exceed 100% of the variable cost of transporting traffic to and from the line plus all the reasonably expected costs of continuing to operate the line (including normalized maintenance and the replacement cost of equipment), the Commission may reduce the surcharge to the level needed to generate such revenues; and (2) if it is established that the complaining shipper would, by virtue of the surcharge, bear an unreasonable proportion of the reasonably expected costs of operating the light density line, the Commission may reallocate the surcharge among the traffic originating or terminating upon the line.

Subsection (c) authorizes a carrier to cancel the application of a joint rate to a particular through route subject to that rate. Another carrier participating in that route or the Commission, upon petition of a shipper having no competitive alternative to the route, may prevent the cancellation upon the same demonstration or by putting into effect the same type of new rate or division necessary to cancel a surcharge under subsection (a). When a cancellation is prevented in this manner, the Commission shall consider the canceling tariff under the provisions of existing law relative to the cancellation of joint rates. If a cancellation becomes effective, the canceling carrier may establish a local or proportional rate for that movement. Any through rate of which that local or proportional rate is a part will divide as the separate factors of the through rate are made and not by prescribed divisions.

No matter when a surcharge or cancellation is challenged under this section, the issue to be decided by the Commission is whether the surcharge or cancellation met the standards of this section at the time it was filed and not at the time it is challenged.

Subsection (d) provides that revenue changes resulting from surcharges shall accrue to the surcharging carrier. Upon demonstration by an intraterritorial connecting class III carrier particularly in a surcharged route, and in the absence of any increase in the joint rate, revenues resulting from a surcharge under subsection (a) in excess of 110 percent of variable cost over that route will be divided with intraterritorial connecting class III carriers in that route on the basis of existing divisions. This section does not apply to revenues resulting from diversions to a line but only to revenue directly accruing from the surcharge.

Subsection (e) provides that, when a carrier puts into effect a new rate or division in order to prevent a surcharge or cancellation from taking effect over a particular route, other carriers can require similar concessions on other routes under the same joint rate in which they participate, subject to the limitations set forth in this subsection.

Subsections (f) through (h) set forth ancillary provisions with respect to surcharges and cancellations regarding notice, effect upon other sections of title 49, and access to information from the Commission regarding revenues and variable cost. In particular, subsection (g) provides that, except where specifically provided in this section, the Commission may not remedy a surcharge or cancellation found to violate another section of title 49 in a way which would require a carrier to provide service at less than 110 percent of variable cost (or reasonably expected costs in the case of a light density line).

Subsections (i) through (k) set forth special remedial provisions available to class III rail carriers relative to surcharges under subsection (a) or cancellations under subsection (c). These provisions allow aggrieved class III carriers to protest surcharges or cancellations which are alleged to be anticompetitive, which will unduly affect the complaining carrier's ability to earn an adequate rate of return or which create unreasonable differences in existing rates. In these limited circumstances the Commission may order relief which requires a surcharging or canceling carrier to carry traffic at less than 110 percent of variable cost if it determines that such relief is warranted by the public interest in preserving rail service or ensuring competition among rail carriers.

Subsection (l) requires the Commission, upon petition by a participating class II or III rail carrier, to prescribe a new compensatory through rate when the application of a joint rate to a through route is canceled under subsection (c).

Subsection (m) sets forth the method for determining variable cost for purposes of this section.

Subsection (n) provides that the authority to make surcharges under subsection (a) expires three years after the effective date of the Act (unless extended for one additional year by the Commission), but that surcharges made before that date will continue to be lawful.

Senate Amendment to House Amendment—No Provision

Conference substitute. The Conference substitute adopts the House substitute, with modifications. Today, most of the property transported by rail moves over through routes subject to joint rates, and the revenue derived from these movements is divided among the participating carriers according to divisions generally prescribed by the Commission. The existing joint rates and divisions do not allow some rail carriers to recover even the variable cost of providing transportation services on certain through routes. Under existing law, unless all carriers participating in the joint rate concur, these rates and divisions can be changed only by protracted proceedings before the Commission.

Two of the major problems caused by the existing joint rate system are too low rate divisions and a proliferation of uneconomic routes protected by the archaic "commercial closing" doctrine.

The Conferees intend that the conference substitute will alleviate these problems in part by assuring that a carrier, with a minimum of regulatory interference will be able, by applying surcharges or directly cancelling routes, to either earn revenues over all lines equal to or exceeding 110 percent of unadjusted ICC formula variable costs or to close routes not providing such level of earnings and, in the case of railroads earning less than adequate revenues with lines carrying less than 3,000,000 gross ton miles, to cover all the costs of operating those lines. The same holds for railroads earning adequate revenues, except only with respect to lines carrying less than 1,000,000 gross ton miles.

With regard to surcharges on light density lines, the conferees intend that such surcharges may not be imposed in a manner which would require shippers to pay for extraordinary occurrences (i.e. bridge washouts, landslides) in a short period of time. The Commission's proceeding should address this issue.

These provisions are intended to insure these results but they in no way imply an intent on the part of Conferees that a carrier's existing rights under the Act to secure improved earnings over specific routes should be limited. The Conferees recognize that a carrier cannot remain healthy only earning revenues at these levels, but believe that at this time the extraordinary provisions of this section are only needed to attain the revenue levels specified in this section and that existing remedies, assuming the Commission chooses to administer them in order to realize the revenue adequacy goals of the Act, should be adequate to remedy other joint route and division problems.

The key to the success of these provisions will be the ease with which they may be implemented by a surcharging or canceling carrier. The Conferees intend that the revenue levels guaranteed by this section take precedence wherever possible to competing claims and that only where action is essential to protect vital public interests should the Commission or the Court act to frustrate the implementation of these provisions.

Administrative feasibility is also the reason the conferees have selected formula costs for use under all provisions except where otherwise specified; and the Conferees encourage the Commission not to permit cost debates to delay the policy of this Act that carriers earn the full and reasonably expected costs of providing service on lines carrying less than 3,000,000 gross ton miles for revenue inadequate carriers and 1,000,000 gross ton miles for revenue adequate carrier. Only if carriers are able to cover all these costs can they expect to begin to invest to provide the service on which our nation's commerce depends.

In determining which carriers qualify as class III carriers, the Commission shall exclude any revenues not earned from freight operations, specifically excluding revenues from passenger service.

All of the provisions as described in the House amendment are available for class III rail carriers.

Section 218—Expedited division of revenues proceedings

Senate bill. The Senate bill amended section 10706(e)(1) of the Interstate Commerce Act by requiring the Commission to complete all evidentiary proceedings to adjust the division of joint rail rates within nine months if the proceeding is brought on complaint or within 18 months if the proceeding is initiated by the Commission. The Commission is required to take final action by the 180th day after the completion of evidentiary proceedings unless the Commission requires more time in which case it must report its reasons to Congress.

However, when the divisions 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 must give the proceeding preference over all other proceedings and must take action within the earliest practicable time. In no event may the Commission fail to act more than 100 days after the completion of the evidentiary proceedings.

House amendment. The House amendment is the same as the Senate bill except it exempts division proceedings involving joint rates participated in by Class III carriers.

Conference substitute. The Conference substitute adopts the Senate provision, except that for a three-year period the ex-

pedited divisions provision shall not apply to class carriers.

The conferees intend that the Commission will modify its regulations governing divisions proceedings to insure that prefiling requirements do not frustrate the purpose of the Congress to expedite divisions proceedings as much as possible. The conferees also expect the Commission to examine closely alternative means of dividing revenues among carriers in a manner which might better reflect market conditions than the crude, across the board divisions which now apply regardless of the specific economic conditions of the carriers involved and the markets they serve.

Section 219—Rate bureaus

Senate bill. The Senate bill modified some of the activities which a rate bureau may permit its members to engage in if it is to be approved by the Commission.

First, intrastate rates affecting interstate commerce may be set collectively in the same manner as interstate rates.

Second, the extent of carrier discussion of single line rates and interline rates related to a particular interline movement is defined and limited.

Third, sound recordings or transcripts must be kept of bureau proceedings, submitted to the ICC and made available to any other federal agency with jurisdiction.

House amendment. The House amendment modified the activities which a rate bureau may permit its members to engage in if it is to be approved by the Commission and its members are to be immune from the application of the antitrust laws.

First, no carrier may discuss, vote or agree on single line rates proposed by another carrier. The Commission may allow such discussion for general rate increases only if it finds that the implementation of the limitation is not feasible.

Second, no carrier may discuss a joint line rate unless it practicably participates in the movement. The term "practicably participates" is to be defined by the Commission.

Third, after January 1, 1984, or earlier, if the Commission decides, unless the Commission finds it is not feasible, no carrier may discuss a joint line rate where there are two routes between the same end points except with a carrier that forms part of a particular single route.

Until January 1, 1983, such carriers may discuss general increases for joint rates and broad tariff changes, if the rate bureau has a special procedure allowing shippers to comment prior to the filing of the tariff with the Commission.

Fourth, employee protective provisions are provided for rate bureau employees affected by this section.

Fifth, in any proceeding in which an antitrust violation is alleged concerning a rail carrier the party making the allegation shall have the burden of proving the violation by clear and convincing evidence. Proof of the violation may not rest on or be inferred from evidence that two or more carriers acted together with respect to an interline movement and that one of the parties took similar action with respect to a competitive route.

Seventh, transcripts or sound recordings must be kept of bureau meetings and submitted to the ICC and made available to other federal agencies with jurisdiction.

Conference substitute. The Conference substitute adopts the House amendment with modifications. The Commission shall define "practicably participate" for determining when a carrier participates in a movement. The Conferees believe that railroads, shippers, and consumers will benefit from increased rail to rail competition, and expect that the Commission will interpret the term in a manner which encourages competition while maintaining a rail system which functions efficiently.

The Conference substitute extends the date by which the Commission must eliminate general rate increases by one year, to January 1, 1984. General rate increases are also limited to inflationary cost increases. Rate bureau discussions are limited to joint movements where carriers have an actual interline movement by January 1, 1984, unless the Commission acts sooner. Car compensation, demurrage, and car allowances are not considered single-line rates.

The Conferees wish to emphasize that nothing in the new law will prevent a carrier from publishing broad territorial rate changes in a tariff.

Because of the requirement that carriers concur in changes to joint rates, carriers must talk to competitors about interline movements in which they interchange. That requirement could falsely lead to conclusions about rate agreements that were lawfully discussed. To prevent such a conclusion the Conference substitute provides procedural protections about lawful discussions and resulting rates. The Conferees intend that these protections be construed to insure that remedies for anti-competitive activities remain under existing laws.

Section 220—Long and short haul transportation

Senate bill. No provision.

House amendment. The House bill amended section 10726 by limiting the provisions of existing law to rates applicable to grains, soybeans, rice or cotton or to situations in which the Commission determines that competition exists between rail and water carriers and the provisions are necessary to prevent anti-competitive behavior. The House amendment also repealed 10726(e) which limited a rail carrier's ability to increase a rate which had been previously decreased to meet water carrier competition.

Conference substitute. The Conference substitute repeals 10726(g). The conferees repealed this subection in order to encourage flexible and innovative pricing by railroads. The conferees' decision to otherwise retain the existing section 10726 is not to be construed to indicate that the Commission is not to take steps consistent with the policy of this Act to reduce barriers to market-oriented pricing without the need for price Commission approval.

Section 221—Railroad entry

Senate bill. The Senate bill changes existing law to permit easier entry, consistent with the policy of this Act to encourage greater reliance on marketplace forces than on government regulation.

Under present law, the Commission may authorize the construction of a railroad only if it finds that the public convenience and necessity "require or will be enhanced" by the construction. This is a more stringent test than that applied to either the abandonment of rail lines or mergers. There does not appear to be any reason why the Commission should apply a more difficult standard for the construction of new facilities than for the abandonment of old facilities. The Senate bill changes the test applied by the Commission from "require or will be enhanced" to "require or permit".

When a railroad has been issued a certificate of public convenience and necessity by the Commission and where the construction or extension of that line would cross another carrier, it is unclear whether the second railroad could block the construction by refusing to let the first railroad cross another carrier. The Senate bill provides that when a railroad has been issued a certificate of public convenience and necessity, no other railroad may block construction by refusing to let the first railroad cross its property, provided that the construction and operation do not materially interfere with the operation of the second railroad and the owner of the crossing line compensates the owner of the crossed line. If the railroads cannot agree on the terms of compensation, the Commission may establish the compensation.

House amendment. The House amendment changes the standard under 49 U.S.C. 10901 for the construction or extension of a rail line from requiring the Commission to find that the "public convenience and necessity require or will be enhanced" by the construction or acquisition (or both) and the operation of the railroad line to requiring the Commission to find that the "public convenience and necessity permit the construction or acquisition". The House amendment permits one railroad that has been issued a certificate of public convenience and necessity to cross the property of another carrier, if the construction does not unreasonably interfere with the operation of the crossed line, the operation does not materially interfere with the operation of the crossed line and the owner of the crossing line compensates the owner of the crossed line. If the carriers are unable to agree to the terms of operation or compensation, either party may submit the matters in dispute to the Commission. The House amendment requires the Commission to impose employee protection under 49 U.S.C. 11347 upon any rail carrier proposing to both construct and operate a new railroad line. If a rail carrier rearranges or adjusts its work force in anticipation of a transaction with the purpose of depriving an employee of benefits under this title, the provisions of this title apply to such employee.

Conference Substitute

The Conference substitute adopts the House amendment, but makes employee protection discretionary and drops the provision regarding deprivation of employee benefits in anticipation of a transaction. The Commission does not have authority over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team switching, or sidetracks, if the tracks are located, or intended to be located, entirely in one state (49 U.S.C. 10907). The Committee does not intend that new subsections added to 49 U.S.C. 10901 shall expand the Commission's jurisdiction. If the construction or extension of a line of railroad would be otherwise exempt under 49 U.S.C. 10901, there should be no reason to obtain a certificate of public convenience and necessity even if the constructing railroad reaches a voluntary agreement to cross another carrier's line. Only if a dispute is submitted to the Commission would there be a need to obtain a certificate of public convenience and necessity. This certificate could be sought at the same time as the dispute is submitted to the Commission. The Conferees wish to emphasize that if a certificate would not otherwise be required under section 10907, the certificate should be issued routinely and that its purpose is (1) to assure Commission jurisdiction under 10901 (d) and (2) to assure that the crossing carrier has its right to serve a shipper sanctioned by the Commission.

Section 222—Service during periods of peak demand

Senate bill. No provision.

House amendment. The House amendment provides that a rail carrier may not be found to have violated its common-carrier obligation under 49 U.S.C. 11101 to provide transportation or service on reasonable requist if it fulfills its commitments under contracts for the shipment of goods before responding to reasonable requests for service.

Conference substitute. The Conference substitute adopts the House amendment. However, this provision does not abrogate the power of the Commission to refuse to ap-

prove contracts on the grounds that they will impair a carrier's ability to meet its common carrier obligation.

Section 223—Reciprocal switching

Senate bill. The Senate authorized the Commission to require railroads to enter into reciprocal switching where it finds such agreements to be practicable and in the public interest. In many parts of the country, reciprocal switching agreements are in effect where carriers pick up and deliver traffic for other railroads. In areas where reciprocal switching is feasible, it provides an avenue of relief for shippers where only one railroad provides service and it is inadequate. The standard "practicable and in the public interest" is the same standard the Commission has applied in considering whether to order the joint use of terminal facilities.

House amendment. The House amendment is the same as the Senate bill, but permits the Commission in its discretion to order protection for employees who are adversely affected by a grant of authority by the Commission under this section.

Conference substitute. The Conference substitute adopts the House provision. The Conferees note that the Commission should use the "practicable and in the public interest" standard even though section 11123 has been expanded to include all facilities, not just the joint use of terminals. The Conferees note that the entry and reciprocal switching provisions should not be used to allow Class I carriers to force their way into traffic originating or terminating on a class III carrier.

Section 224—Car service compensation

Senate bill. No provision.

House amendment. The House amendment repeals section 11122(b)(2) which allowed the Commission to impose incentive per diem rates.

The House amendment also provides that when shippers enter into an agreement to discuss what they will propose to charge rail carriers for the use by such rail carriers of rolling stock owned or leased by such shippers, they shall apply to the Commission for approval of the agreement. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the rail transportation policy in section 10101a of this title. The Commission may require compliance with conditions necessary to make the agreement further the rail transportation policy. If the Commission approves the agreement, and action by a party under its terms or the terms required by the Commission shall receive antitrust immunity under section 10706(a)(2).

The House amendments also provides that where the shippers who have entered into an agreement approved by the Commission and the rail carriers proposing to use the rolling stock owned or leased by the shippers cannot agree upon the amount of compensation to be paid for the use of such rolling stock, any party directly involved in the negotiations may settle the matter by submitting the issues in dispute to the Commission. The Commission shall render a binding decision on the issues based on a standard of reasonableness. The Commission's decision may consider any past precedents or the history of the negotiations and must be rendered within 90 days of the submission of the dispute to the Commission.

Conference substitute. The Conference substitute adopts the provisions of the House amendment and adds a provision which states that the law in effect prior to the effective date of this Act with respect to the obligation of rail carriers to utilize rolling stock owned or leased by shippers shall remain in effect.

The conferees do not believe that the provision of an incentive element on freight equipment is the best means of attracing capital into the industry for the acquisition of rolling stock. Rather, the rental rate for such rolling stock should be sufficient to pay an adequate return on investment. The conferees do anticipate, however, that the Commission shall continue to examine means (such as flexible car hire) of making basic car hire more responsive to market forces where this is possible without subjecting carriers which are forced to use cars received in interchange to unreasonable rates.

The conferees intend that marketplace decisions govern the railroad industry and its relationship with shippers. Indeed this policy is ennunciated in the rail transportation policy. The conferees expect that antitrust immunity is granted under this section consistent with previous Commission decisions. The conferees are aware that shippers could have antitrust immunity to establish private car-hire when participating in a Commission proceeding and do not intend that this provision shall change existing law in that regard.

If the Commission allows per diem rates below basic per diem during periods of surplus car supply, the Commission should allow rates above basic per diem during periods of shortage.

Section 225—Car utilization

Senate bill. The Senate bill created a new section 10732 of the Interstate Commerce Act. This section provides that rail carriers are free to establish a special elective tariff which contains premium freight rates for special services or levels of services that may be requested by a shipper. Throughout Senate hearings on rail regulatory reform, testimony was submitted by many shippers who advised that they were prepared to pay a higher rate for a higher level or more expeditious service. This amendment will give those shippers that option and, in turn, allow the rail carriers to increase the utilization of their cars.

Essentially, this subsection allows carriers to provide a more specialized service to shippers who choose to pay the premium rate, but the common carrier obligation is not abrogated in any way. This will insure that the shipper is still guaranteed the same level of service that he receives today. This subsection is simply another option for the shipper and the rail carrier.

House amendment. No provision.

Conference substitute. The Conference substitute adopts the Senate provision, with an amendment.

Section 226—Car service orders for exigent circumstances

Senate bill. The Senate bill limited the Commission's authority to issue car service orders under 49 U.S.C. 11123 in two ways. First, the Commission would be restricted to emergencies "of such magnitude as to have substantial adverse effects on rail service to the nation or a substantial region of the nation". Second, the Senate bill restricted emergency orders to 30 days, but permitted the Commission to extend the order another 60 days if the Commission had a proceeding to resolve the service problems which generated the need for the emergency order on a more permanent basis. The two restrictions were adopted based on the belief that only real emergencies should trigger such orders and that in the past, the Commission has been far too willing to issue car service orders in other than emergency situations. The Senate bill removed the limitation in existing law that the Commission may order only the joint or common use of terminals, including mainline tracks for a reasonable distance outside of those terminals. The Commission would be permitted to require the joint or common use of all facilities when it considers that a shortage of equipment, congestion of traffic, or qualifying emergency exists.

House amendment. The House amendment limited the Commission's authority to issue car service orders under 49 U.S.C. 11123 in instances where it finds a "shortage of equipment, congestion of traffic or other failure in traffic movement exists which creates an emergency situation resulting in substantial adverse effects of rail service in the United States or a substantial region of the United States." The House amendment requires the Commission to find a nationwide emergency or broad regional emergency that justify the extraordinary remedy of the imposition of car service orders. The House amendment permits the Commission to extend such orders beyond 30 days if the Secretary of Transportation certifies that a transportation emergency exists. The House amendment permits the Commission when it makes the prerequisite findings to require the joint use of all facilities, not just terminal and mainline tracks a reasonable distance outside those terminals. This provision will permit the Commission to effectively address genuine emergency situations in an expeditious manner without restrictions regarding the use of a railroad's facilities, including mainlines and equipment by another railroad or over that railroad. This provision specifically overrules the decision in *Atchison, Topeka and Santa Fe v. ICC*, 617 F. 2nd 485 (7th Cir., 1980). When the Commission does require one railroad to use or go over another railroad's facilities, the Commission shall require, to the maximum extent practicable, the use of employees who would have performed work in connection with the traffic subject to the action of the Commission.

Conference substitute. The Conference substitute adopts the House provision, but authorizes the full Commission after a hearing to determine that a transportation emergency exists if the original 30-day order is to be extended. The conferees emphasize that the Commission's powers under this section are extraordinary and should be exercised only in genuine emergencies. Some shipping interests have expressed concern as to the scope of this section. An important distinction must be borne in mind. Section 11123 of title 49 is being amended as to the required regional or national type emergency before the Commission can issue car service orders, as well as the duration and the scope of the car service orders.

The Conferees want to emphasize that the provisions of section 11122 of title 49 of the United States Code as to permanent rules and regulations on railroad car service are unaffected and remain intact. The importance of insuring on a day-to-day basis the efficient functioning of our unified national rail system and network remains. The Commission still retains its power to issue permanent mandatory car service rules such as those which are now in effect and which govern the movement of railroad cars throughout the country.

Section 227—Employee protection

Senate bill. No provision.

House amendment. The House amendment provided for employee protection, as described in 49 U.S.C. 11347, to be imposed in transactions involving transfers or the operation of or over a debtor's lines by another entity under section 1172(b) of the Bankruptcy Act of 1978. The provision puts employees of rail carriers which entered bankruptcy after the effective date of the Bankruptcy Act of 1978 in the same position as employees of rail carriers that entered bankruptcy prior to the Bankruptcy Act of 1978 with respect to employee protection. This provision is not intended to change existing law with respect to either the priority or the timing of payment of employee protection in a bankruptcy proceeding.

Conference substitute. The Conference substitute follows the House provision.

Section 228—Mergers and other transactions

Senate bill. The Senate bill would make no changes in the present law with respect to major rail mergers: the ICC would consider such proposals under existing standards and procedures, and the present time limit of about 31 months (which was established by the 4R Act) would be retained. However, this section makes two major changes in the present law under which the Commission is required to consider all other restructuring transactions among railroads (including the purchase or sale of assets, trackage rights, and the like). These changes are intended to encourage the rationalization and restructuring of the rail system through actions less than merger.

First, the Commission would have to decide on smaller transactions faster than under present law. Present law permits the Commission 18 months to decide all such cases regardless of their complexity or importance. For transactions having regional or national significance, this section would require the Commission to reach a decision within 10 months. For transactions which do not have regional or national transportation significance, this section would require the Commission to reach a decision within 6 months. These deadlines are, of course, maximum time limits and the Committee believes that many applications can and should be processed without taking the full amount of time allowed.

In order to meet the deadlines specified in this section, the number of factors the Commission must consider in ruling on transactions less than merger would be reduced. (The Commission now applies the same test to all transactions as to major mergers.) This section would require the Commission to balance the transportation benefits of the transaction against any anticompetitive effects. In addition, where the transaction is part of a restructuring project previously approved by the Secretary of Transportation under section 401 of the 4R Act, the Commission would be required to give substantial weight to the recommendations of the Secretary.

House amendment. The House bill contains a provision relating to the factors the Commission is required to consider when passing on major mergers. The House provision would require the Commission to consider whether the proposed transaction would have an adverse effect on competition among rail carriers.

Conference substitute. The conference substitute includes a combination of the House and Senate provisions. The conferees note that many transactions for which Commission approval is required are minor in nature and routinely approved. The Committee believes that the Commission should focus its attention on more important issues and judiciously use its statutory authority to reduce the burden on all parties (including a reduction in paperwork) where approval is routinely and consistently granted.

Section 229—Savings provisions

Senate bill. The Senate bill provided that a rail rate in existence on the date of enactment of this Act could only be challenged as being not reasonable within 270 days after enactment. Such rate would not be found not reasonable if its revenue-to-variable cost ratio did not exceed the average ratio of revenue-to-variable cost established by the Commission.

House amendment. The House amendment provided that any rate for a carrier in effect on the effective date of this Act could be challenged within 180 days of the date in a complaint filed with the Commission alleging that the carrier had market dominance under section 10709 over the particular route to which the rate applied and that the rate was not reasonable under new section 10701 (a). If a rate in effect upon enactment has not been challenged within 180 days or was challenged and found to be reasonable, the rate could not again be challenged before the Commission or any court.

The savings provisions would not apply to any rate under which the volume of traffic moved during the 12-month period immediately preceding the effective date did not exceed 500 net tons where such rate has increased tenfold in the 3-year period immediately preceding the bringing of a challenge to the increase of such rate.

In all cases under this section, the burden of proof is on the complainant.

Conference substitute. The Conference substitute adopts the House bill. This conference substitute allows a 180-day period from the effective date of the bill in which existing rate may be challenged as unreasonably high under the procedure of 11701. The Conferees do not intend this right to be construed as creating any presumption as to the reasonableness of the rates subject to challenge. The purpose of this provision is to give affected parties a final opportunity to review the reasonableness of existing rates before their opportunity to challenge those rates is curtailed. Any challenges arising under this section shall be limited by the jurisdictional standards otherwise newly adopted in the Staggers Rail Act of 1980.

Section 301—Uniform accounting system

Senate bill. No provision.

House amendment. The House amendment makes section 11142, which requires the Commission to prescribe a uniform cost and revenue accounting and reporting system applicable only to non-rail carriers. Previous accounting and reporting systems developed by the Commission for rail carriers are to be replaced by the accounting and reporting requirements of Title III of the amendment.

Conference substitute. The Conference substitute is the same as the House amendment.

Section 302—Railroad cost accounting

Senate bill. No provision.

House amendment. The House amendment establishes a Railroad Accounting Standards Board, consisting of seven members and chaired by the Comptroller General of the United States. The purpose of the Board is to develop cost accounting principles which identify—variable costs which accurately represent the economic costs of rail movements.

The Board, in developing principles, is to take into account several factors concerning the regulatory purpose, the costs and benefits for rail carriers, and the least expensive way of obtaining the cost information.

The Commission is to promulgate rules to implement the principles developed by the Board.

Within 180 days after enactment, each railroad must file a request with the ICC for preliminary certification, which is to be granted if the carriers cost accounting system is in compliance with the ICC accounting principles in effect on the date of enactment. The Conferees do not envision the requirements for preliminary certification to be any more than a simple affirmation that the carrier is meeting and will continue to meet the existing requirements of the Commission.

The Commission shall grant final certification if it finds that a carrier's accounting system is in compliance with the rules promulgated by the Commission, under the principles of the Board.

Each rail carrier is to maintain a system that is in compliance with rules promulgated by the Commission, under the principles of the Board.

Rail carriers are required to make cost data available to parties to a Commission proceeding.

In order to obtain expense and revenue information for regulatory purposes, the Commission may promulgate rules which prescribe expense and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to rail carriers. The Commission in promulgating rules for expense and revenue accounting and reporting requirements shall ensure that such requirements are cost effective and not duplicative of the managerial and responsibility accounting requirements of carriers.

The Board shall file two reports with the Congress within 2 years after the effective date of this legislation. One report is to compare the cost of implementing the accounting standards to possible benefits. A second report is to recommend changes to the regulatory system, including maximum rate regulation, to integrate the new cost accounting standards and rules.

Conference substitute. The Conference adopted the House provision with the following changes: First, the Conference substitute makes it clear that the primary purpose of the Cost Accounting Principles Board is to promulgate sound principles to govern the determination of railroad costs rather than detailed standards. Second, the Conference substitute limits the availability of cost evidence to that which the Commission will allow under its discovery rules. Third, the Conference substitute authorizes the appropriation of $1 million per year to carry out the functions of the Cost Accounting Principles Board. Fourth, the Conference substitute limits the number of Board members to seven. Fifth, the Conference substitute requires that the Board conduct one study, recommending legislative or administrative action that may be necessary to integrate the cost accounting principles and certification process with the regulatory system, including maximum rate regulation. Sixth, the conference substitute makes certain technical changes to stress that the principles promulgated by the Board and the rules promulgated by the Commission are to emphasize the degree of economic accuracy needed for regulatory purposes and not merely the accumulation of more detailed, but not necessarily more accurate, accounting information.

The substitute clarifies the description of the type of principles to be determined in order to eliminate redundant language contained in the House bill. The Conferees intent is to provide for the most accurate possible statement of costs, both direct and indirect, associated with particular movements of goods, and the Board in developing its principles should consider the degree of reliability with which such costs can be attributed to specific movements.

The Conferees expect that while the Board develops its principles, the Commission will continue its efforts to complete the uniform revenue and cost systems which it commenced after the passage of the 4R Act so that the Board, as part of its task, will be able to evaluate that system as it is developing its principles.

The Conferees desire the Board's principles will be sufficiently sound that they will be generally applicable for both regulatory and management purposes. To this end, railroads are to be afforded maximum possible freedom consistent with the Commission's regulatory needs, to develop internal accounting and cost finding systems that are suited to the needs of the carriers themselves. The Conferees wish to emphasize, however, that the purpose of the Board's efforts is to develop a regulatory accounting system and that this section is not intended to limit the use of cost finding systems by railroads which railroads might find useful for management purposes.

The substitute allows, but does not require, the Commission to promulgate rules prescribing expense and revenue accounting

and reporting requirements. In addition to other limitations in the bill designed to minimize the burden of such rules on carriers, the bill requires that to the extent they are required solely to provide expense and revenue information necessary for determining railroad costs in regulatory proceedings, the rules must comply with the principles established by the Railroad Accounting Principles Board.

The Committee recognizes that the Commission has exempted Class III railroads from the Uniform System of Accounts. The Committee shares the view that elaborate accounting systems imposed upon smaller railroads could produce a much greater burden on the railroad than could be justified by offsetting public benefits. Thus, the Committee has left with the Commission the discretion to exempt carriers from the burdens of a Cost Accounting System if this seems desirable. We encourage the Commission to continue the practice of granting exemptions as needed to relieve unnecessary paperwork burdens and costs on small businesses.

Section 303—Civil penalties for violations of accounting principles provisions

Senate bill. No provision.

House amendment. A carrier failing to obtain final certification of its cost accounting system is to be fined not less than $50,000. Any party to a proceeding who knowingly discloses confidential data made available by a railroad pursuant to this title may be fined up to $50,000.

Conference substitute. The Conference is the same as the House amendment.

Section 401—Feeder railroad development program

Senate bill. No provision.

House amendment. To provide shipper groups and government agencies an alternative to inadequate rail service and to preserve feeder lines prior to the total downgrading of such lines, the House amendment provides for a feeder line development program which would require a rail carrier to sell a railroad line to a financially responsible person at a price not less than the constitutional minimum, if the Commission makes a finding that the present or future public convenience and necessity required or permitted the abandonment or discontinuance of a railroad line, or if the Commission makes a finding that the transportation provided over a particular line is inadequate. Inadequate transportation is defined by five criteria. The Commission must affirmatively determine the existence of the conditions set forth in all five criteria as a prerequisite to the sale of a railroad line under this section. The burden of proving inadequacy of service is on the person filing to acquire the rail line.

The Commission may require the selling carrier to provide the acquiring carrier trackage rights if the acquiring carrier compensates the selling carrier for such trackage rights. If an acquiring rail carrier petitions the Commission for a joint rate, the Commission is required to grant such acquiring carrier a reasonable compensatory joint rate.

The carrier is exempt from sections 10901 and 10903 of the Interstate Commerce Act, except if an acquiring carrier participates in a joint rate. The feeder line development program permits an acquiring carrier to conditions which shippers must meet as a prerequisite to using the line.

Conference substitute. The Conference substitute adopts the House provision with several modifications.

First, the program is limited for the first three years to lines carrying 3,000,000 gross ton miles per year or less. After the third year any line is eligible for acquisition under the program but joint rates cannot be mandated for lines acquired carrying more than 8,000,000 gross tons per mile per year.

Second, the feeder railroad program is not intended to supplant the branch line program under existing law. Where an application for abandonment has been actually filed with the Commission, existing provisions of the Interstate Commerce Act and of the Local Rail Service Assistance Act will be available.

Third, an opportunity is given for the Commission to allow a rail carrier a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over a line in question.

Fourth, it is made clear that the Commission may require trackage rights to the acquiring carrier in order to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between non-contiguous feeder lines operated by the acquiring carrier. The Conferees recognize that one operator may acquire a number of non-contiguous branch lines thereby requiring the allocation of trackage rights in order to permit movement of power equipment between the non-contiguous lines.

Fifth, normal labor protection is afforded employees of the selling carrier and the provision requires the acquiring carrier to hire, to the maximum extent practicable, the employees who would normally have performed work in connection with a line subject to sale under the program.

The Conferees believe that the feeder line program will give shippers and communities an opportunity to insist upon adequate rail service. Where such service is not forthcoming the provision provides, through acquisition, a viable alternative to poor service or total abandonment.

Section 402—Abandonment

Senate bill. Section 202 of the Senate bill alters the existing provisions of the Interstate Commerce Act relating to abandonments of railroad lines. This section expedites abandonment proceedings by specifically setting forth time periods within which the Commission must act upon abandonment applications, depending on the complexity of and the opposition to the abandonment proceeding. For example, under existing law, there is no time limit within which an investigation of an abandonment application must be concluded. Section 202(c)(3) places a time limit of 135 days upon such investigations.

Section 202 repeals existing 49 U.S.C. 10905. New section 10905 creates a mechanism that requires railroads to sell a railroad line approved for abandoment to a financially responsible party if the financially responsible party has offered to pay the acquisition cost of the line or the difference between the revenues attributable to providing that service plus a reasonable return on the value of the line. Section 202 also requires rail carriers petitioning for abandonment of a railroad line to provide interested parties an estimate of the subsidy or the minimum purchase price required to keep the line in operation, calculated in accordance with the new provisions in 49 U.S.C. 10905.

The provisions in section 202 assist shippers who are sincerely interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings which are calculated merely to tediously extend the abandonment process.

House amendment. No provision.

Conference substitute. The Conference substitute adopts the Senate provision.

Section 403—Conversion of abandoned railroad rights-of-way

Senate bill. Section 305 of the Senate bill is an amendment to the original bill, S. 1946, the Railroad Transportation Policy Act of 1979. The section authorized $20 million over a 3-year period for acquisition of abandoned railroad rights-of-way for future use as bicycle paths, jogging and hiking trails and related transportation, recreation and conservation uses, as stated in section 809 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). This authorization includes matching Federal and State funds, with the Federal share being 80 percent and the State share being 20 percent.

The 4R Act authorized $30 million for fiscal year 1976, 1977 and 1978 to the Department of Interior for acquisition of abandoned railroad rights-of-way for conversion to trails related to transportation, recreation, and conservation. Based on this initial authorization $8 million was appropriated during the 95th Congress to Department of Interior Bureau of Recreation (now the Heritage and Recreational Services) for funding the Rail-to-Trail program.

The response to the Department of Interior's public notice of funding for the Rail-to-Trail program was very enthusiastic. The Department received 185 applications totaling $70 million. Because of the large response to the project, DOI felt they could be selective in the application approval. Top priority was given to applications for trails based or originating in metropolitan areas as well as trails used for commuter transportation.

Ten projects received funding from the $8 million appropriated. These 10 projects represent 121.62 miles of multiple-use trails from abandoned rail lines in 10 States. This is a small percentage of the 6,232 miles of nationwide abandonments suitable for conversion to transportation and recreational uses.

Funding authority for this project expired as of September 30, 1979. This authorization will allow for the continuation of the Rail-to-Trail program started in the 4R Act. Evidence from State governments has shown intense interest in preserving funding for this program.

House amendment. The House amendment has no provision.

Conference substitute. The Conference substitute adopt the Senate provision, but reduces the authorization to $10 million.

Section 404—Extension of redeemble preference share financing

Senate bill. The Senate bill continues the existing redeemable preference share program for two years, until September 30, 1982, and it authorizes an additional $400 million for this purpose. The Senate provision expands the scope of eligible participants under the program and provides a specific allocation of program funds for labor cost associated with improved manpower effectiveness.

House amendment. The House amendment extends the existing redeemable preference share program for two years.

Conference substitute. The Conference substitute extends the redeemable preference share program until September 30, 1982. The funding provisions are discussed in the following section.

Section 405—Financing

Senate bill. The Senate bill contains an amendment to section 511(a) of the 4-R Act. Section 511 of the 4-R Act is one of the financial assistance programs available to railroads for the acquisition, repair, or improvement of rolling stock and facilities associated with rolling stock. This amendment opens the doors of eligibility to this loan program to computerized car management systems which carriers desire to acquire, repair, or rehabilitate. Most railroads in this Nation operate sophisticated computer systems to follow their rolling stock throughout their rail network. These computers are essential to the efficient management of a railroad's car fleet. Unfortunately, as technology improves, many of the early computer systems have become obsolete. The new tech-

nology which is available would certainly pay for itself in a short period as a result of increased utilization of the car fleet. All loans under the 511 loan program are absolutely secured.

House amendment. The House amendment authorizes the Secretary to provide assistance (either alone or as a participant with other investors) to any railroad or its subsidiary to achieve significant restructuring. The assistance may be used for the purchase of securities or the rehabilitation, improvement, or acquisition of facilities (including track, maintenance, equipment and related labor protection costs) which the Secretary, based upon a restructuring plan provided to the Secretary or as part of a restructuring project supported by the Secretary under section 5(a)-(d) of the Department of Transportation Act, or both, determines will contribute to significant railroad restructuring that would not likely be achieved without Federal assistance. The assistance may also be used for purchase or rehabilitation of feeder lines. States, communities, or shippers groups that intend to purchase a feeder line are to be considered railroads for the purposes of this section.

Senate amendment. The Senate amendment extends the existing section 505 to September 30, 1982, and authorizes an additional $400 million.

A new paragraph is added to section 505 (b) to authorize the Secretary to provide a percentage not more than 20 percent of the total funds authorized for this program to employee or shipper groups formed pursuant to an employee and/or shipper stock ownership plan for purchase and/or rehabilitation of rail lines or facilities. In determining the priority by which such groups should receive funding under this program, the Secretary is directed to consider the availability of other feasible alternatives for providing rail service. It is specifically intended that those projects without a viable or feasible alternative would receive a priority in the allocation of available funds under this section.

The Senate amendment adds a new section 505(A) to the current law granting the Secretary of Transportation the authority to provide Class I rail carriers with financial assistance to cover labor costs associated with operational improvements.

The Senate bill clarifies what specific actions would be considered a form of restructuring for the purposes of the 505 program.

Conference substitute. The Conference substitute adopts the Senate provisions, but increases the authorization to $700,000,000, in section 505 funds. Conferees do not agree with any suggestion that a legitimate need for rehabilitation of track cannot exist outside a restructuring. Conferees have provided for restructuring under the Milwaukee Railroad Restructuring Act and are expanding that under this bill to include purchase of rail assets as elements of an eligible project—but not necessarily priority elements. The Congressional intent in establishing the Preference Share Program under section 505 was to provide a "bank of last resort" to put money quickly into railroads to address the deferred maintenance problem while solutions to the overall financial shortfall in the industry could be developed. Much deferred maintenance remains. This Conference does not believe that now is the time to scrap the existing program, thereby forcing the marginal carrier to seek Federal assistance on terms more appropriate for healthy railroads.

The Conference substitute earmarks in the section 505 authorization $200,000,000, originally authorized in the restructuring provisions of the House bill, for automatic transfer by the Secretary to the United States Railway Association for use by Conrail in establishing a voluntary annuity program to reduce the size of its workforce. The money is to be transferred to the account under Section 216 of the Regional Reorganization Act, notwithstanding the authorization limitation of that section.

The Conferees intend for the Finance Committee of the Association to determine if (1) any program proposed by the Corporation will in fact reduce the size of the Corporation's workforce, and (2) funding of the program will result in substantial savings to the United States as measured against the probable costs to the Government of not reducing the Corporation's workforce to the extent contemplated by the institution of a voluntary early retirement annuity program.

To facilitate the institution of such a program subsection (b)(1) of section 405 amends Section 216(b) of the Regional Rail Reorganization Act of 1973 by adding paragraph (B) which makes it clear that employees of the Corporation taking advantage of an early retirement program will be deemed to have a "current connection with the railroad industry" so as to avoid losing Railroad Retirement eligibility at the appropriate age.

Section 406—Transaction assistance

Senate bill. No provision.

House amendment. The House amendment creates a new category for financial assistance under section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210). Specifically, financial assistance would be available to purchase properties of the Milwaukee Railroad located in the State of Montana for rail banking.

Conference substitute. The Conference substitute adopts the House amendment.

Section 407—Electrification loan guarantees

Senate bill. No provision.

House amendment. The House amendment amends 211(i) of the Regional Rail Reorganization Act to make available to railroads in addition to Conrail loan guarantees for the purpose of electrifying high density mainlines. Loan guarantees for capital improvements for coal export facilities are provided for the Corporation and other railroads in the region receiving assistance under the 3-R Act.

Conference substitute. The Conference substitute is the same as the House amendment but the Secretary's authority to waive findings in 511(g) has been deleted. The Conferees expect that the loan guarantees for capital improvements for coal export facilities available under this section will be used to construct coal export facilities such as the proposed coal facility at the Port of Philadelphia.

Section 408—Amendment to the Regional Rail Reorganization Act of 1973

Senate bill. No provision.

House amendment. The House amendment raises the amount authorized to be loaned to any railroad in the region receiving assistance under section 211(d)(2) of the Regional Rail Reorganization Act of 1973, notwithstanding sections 211 (e)(3) and (f).

Conference substitute. The Conference substitute adopts the House provision.

Section 409—Federal assistance report

Senate bill. No provision.

House amendment. The House amendment provides direction to the Secretary of Transportation on the coordination of federal assistance and also requires the Secretary to file an annual report on federal assistance provided to the rail industry, the reasons for each loan or grant, and the results to be expected.

Conference substitute. The Conference substitute requires the study described above but does not include the directions for coordination to the Secretary.

Section 501—Monthly displacement allowance

Senate bill. No provision.

House amendment. The House amendment proposed four new formulas for monthly displacement allowance as follows:

1. *Non-operating employees:* Except for maintenance-of-way employees, non-operating employees (i.e., other than train and engine service employees) will receive an hourly guarantee, based upon the rate of pay of the position they held on September 1, 1979. This guarantee will be increased to reflect subsequent general wage increases, and will be increased whenever the employee, through the exercise of his or her seniority, becomes the qualified incumbent of a higher rated position. If, as a result of a reduction in the number of positions available, a protected employee is required to exercise seniority to a position with an hourly rate less than the guarantee, the employee will receive a monthly guarantee payment representing the hourly differential multiplied by the number of hours in the new position's straight-time work schedule for the claim month. If a protected employee is unable to retain any position, the employee will receive the guaranteed hourly rate for the number of hours the employee would have worked on a straight-time basis if he or she had retained his or her previous position.

2. *Maintenance-of-way employees:* The maintenance-of-way guarantee is based on average monthly compensation, which is total compensation received by an employee during 1974, divided by total time paid for, and multiplied by 174 or by average monthly time paid for, whichever is less, and adjusted to reflect subsequent general wage increases. The protected employee's monthly displacement allowance is the difference between the straight-time earnings and 80 percent of the average monthly compensation, less time lost due to voluntary absences other than vacations.

If, at the close of a calendar year, the sum of the employee's annual straight-time compensation, monthly displacement allowance payments, and offsets under this title are less than the employee's average monthly compensation divided by 12, the employee would receive an additional payment for the difference. If, in the previous calendar year, an employee has received displacement allowances payments greater than his annual guarantee, the excess benefits would be recovered from current or future entitlements, exclusive of moving expense benefits.

The House amendment also conforms the guarantee formulas for employees affected by a supplemental transaction to the revised guarantee formulas for other protected employees.

3. *Operating employees:* It is proposed that operating employees (i.e., train and engine service employees) retain their current monthly guarantee subject to two important modifications. Average 1977 Conrail earnings will be calculated for each Commission classification of operating employees. These values will be upgraded by subsequent general wage increases, and will constitute maxima. These protected employees whose current monthly guarantees exceed the applicable maximum will have their gurantees reduced to the maximum. The second modification is an annual calculation in accordance with the maintenance-of-way formula described above. If a protected employee's earnings are less than the guarantee in any month, 75% of the difference will be paid. At the end of the calendar year, a comparison of guarantee and earnings on the annual basis will determine whether an additional payment will be made or whether future payments will be withheld pending recovery.

4. *Non-contract employees and employees who have been transferred:* No change is proposed in the guarantee formula currently applicable to these employees. Non-contract employees receive salaries which do not include overtime compensation. Additionally, they receive merit increases rather than general wage increases, so that their guarantees have not changed since the formation of Conrail. Consequently, they have not been

the recipients of "windfall" payments as is the case with contract employees.

Transferred employees retain their current guarantee. They have frequently purchased new homes at a price reflecting the standard of living they were assured of on the basis of the current guarantee formula. A sudden reduction in their monthly income might place them in an untenable financial position. There are approximately 350 employees who have transferred.

There are two other changes made in this section. Under subsection (b)(7), in addition to all unemployment compensation benefits and railroad earnings being set off against the employee's monthly displacement allowance (as under existing law), all outside earnings of a protected employee deprived of employment must be setoff against employee's monthly displacement allowances. This change will assure that the monthly displacement allowances of such protected employees are fully offset by other compensation.

An additional change is made by this section in proposed subsection (b)(10). It calls for employees deprived of employment, or the employees' class or craft representative, and the employer to agree on a procedure by which such employees will report their nonrailroad earnings in order that they may be setoff against monthly displacement allowances. It also calls for an agreed upon procedure by which the employer is kept apprised of the unemployment benefits currently paid to employees deprived of employment, also for the purpose of off-setting their monthly displacement allowances. These procedures are necessary to ensure that the reporting/investigative burdens are shared by the employer and the employees, rather than having the burden of investigation fall solely on the employer, as now exists.

Senate amendment. The Senate amendment is similar to the House amendment except for maintenance-of-way employee payments.

Maintenance-of-way employees often work as portable equipment operators in the summer when extensive track rehabilitation is undertaken, and as trackmen in the winter when only routine maintenance can be performed. As a result of this circumstance, maintenance-of-way employees frequently earn less than their average monthly compensation in the winter and more than their average monthly compensation in the summer. When monthly displacement allowances during the winter months are added to these earnings, the employee's actual annual compensation can well exceed his or her annual compensation guarantee.

In order to correct this situation, a separate calculation is proposed for maintenance-of-way employees. Each protected employee will be assigned a monthly guarantee equal to the employee's 1974 average hourly earnings on a straight-time basis, upgraded by subsequent general wage increases, and multiplied by 174 (i.e., the number of hours in a straight-time work schedule in the average month). If a protected employee's current monthly guarantee is less than this value, the current guarantee will be retained. If, in any month, a protected employee's earnings are less than the guarantee, a payment will be due equal to 75% of the difference. At the end of the calendar year the employee's annual guarantee will be compared to his or her annual earnings plus monthly guarantee payments and any offsets. If the annual guarantee is larger, the full difference will be paid. If the annual calculation demonstrates that all or a portion of the monthly guarantee payments represent an overpayment, the employee will be entitled to no further guarantee payments until the overpayment is recovered. In the calculation of guarantee payments on the monthly and annual basis, earnings include overtime rate on any given day.

Conference substitute. This follows the House provision. The conferees note that changes in the monthly displacement allowances formulas were necessary to eliminate expensive inequities in the current formulas. The conferees note that different formulas were provided for different classes and crafts of employees because of different procedures used to determine the basic wages of different classes and crafts of railroad employees and because the work schedules of certain employees (such as maintenance-of-way employees) are subject to irregular and seasonal fluctuations. The conferees believe the use of these different formulas is rationally related to such differences among the classes and crafts and to the need to conserve scarce government resources.

Section 502—Duration of monthly displacement allowance

Senate bill. No provision.

House amendment. The House amendment would restrict the payment of the monthly displacement allowance in two situations. First, a protected employee's entitlement to a monthly displacement allowance would be suspended for the period that the employee fails to work for reasons beyond the control of his or her current employer due to strikes, flood, snowstorms, and similar natural occurrences. Second, the legislation would require a protected employee to claim a monthly displacement allowance within three months of entitlement unless the claim is the subject of or based upon an arbitration decision. It also would require that entitlement to claims be approved or denied within 150 days after a claim is filed for the first year following enactment and within 90 days thereafter, unless the employee and the employer agree upon other timeframes for filing and determining claims. This provision will eliminate bookkeeping problems caused by delay in filing a claim for a monthly displacement allowance, and enable the Corporation to assess more accurately expected payments for labor protection. The legislation further provides that unless denied within the timeframes by the carrier, the claim would be deemed approved.

Senate amendment. The Senate amendment contains a similar provision.

Conference substitute. The Conference substitute contains the provision in the House and Senate amendments.

Section 503—Training and transfer

Senate bill. No provision.

House amendment. The House amendment addresses restrictions on manpower utilization by permitting the Corporation and other employers with protected employees to transfer such employees in the marine crafts and unemployed Penn Truck Lines, Inc. workers to another class, and by offering retraining programs to make the inter-class transfer provisions meaningful.

The new training and transfer provisions would apply to unemployed protected employees in the marine crafts and unemployed Penn Truck Lines, Inc. employees. No bona fide vacancies exist for these employees in their class or craft. Consequently, their guarantee payments represent a considerable ongoing liability.

Training expenses would be paid for by the Corporation or other employer, which could then be reimbursed from the Regional Rail Transportation Protective Account. Moving expenses incident to transfers would be reimbursable under the provisions of section 505 (g), as is the case under existing law.

Senate amendment. The Senate amendment is similar, with two exceptions. The power to transfer unemployed protected employees is extended to employers besides the Corporation, and the multiple offer provision was not adopted.

The "multiple offer" provision establishes procedures that permit the Corporation and other employers to expedite reassignments by making simultaneous offers of a vacancy to no more than 5 employees at a time (those contacted employees junior to the least senior employee who accepts the vacancy will be furloughed or served).

Conference substitute. The Conference substitute follows the Senate bill, but retains the restriction in the House bill which allows only Conrail to transfer protected employees. However, the substitute permits Amtrak to transfer employees within their seniority districts unless Amtrak and the affected unions agree to negotiate an appropriate collective-bargaining agreement in this area.

The substitute also restricts use of the multiple offer provision to unemployed protected employees of the marine crafts and protected employees of Penn Truck Lines. Other employees would not be subject to the multiple offer provision.

Section 504—Payment, audit and report

Senate bill. No provision.

House amendment. The House amendment would redesignate section 509 of the 3R Act as section 509(a) and increase the amount of funds authorized to be appropriated under Title V by $235 million (of which up to $180 million could be spent on MDA's) to a new authorization level of $485 million making training costs incurred by the Corporation under revised section 505(d)(4)(D) reimbursable costs, direct the Secretary of Transportation to be responsible for requesting needed appropriations for expenditure by the Railroad Retirement Board, and additionally authorize the appropriation of funds for administrative expenses incurred by the Railroad Retirement Board in performing their functions under section 509. The appropriations may be allocated by the Secretary to the Board and the Association.

It is proposed that an additional $235 million be authorized to fund the revised level of benefits afforded by these amendments. Conrail projects that this sum will fund the program. If in fact the cost of the program exceeds an additional $235 million, the carriers employing protected employees would be responsible for the payment of benefits without reimbursement.

In addition, this section would add two new subsections to section 509 that improve program auditing and reporting responsibilities upon the Association. Section 509(b) would direct the Association to conduct a program audit of the payment of benefits under Title V and evaluate the effectiveness of the provisions of Title V in providing a reasonable level of protection to protected employees and enabling the Corporation to improve management of the protected employees in its workforce. In conducting the program audit, the Association should be particularly sensitive to the impact of Title V provisions upon management policies, so that the Association will be able to suggest corrective legislation quickly in the event inequities are uncovered in the program or the way that the Corporation administers the program.

The Association would be afforded access to pertinent documents for the purpose of facilitating its program audit and evaluation functions. Section 509(c) would require the Association to transmit an annual detailed and comprehensive report of its periodic program audit and evaluation to the Congress and the President within 60 days after the end of each fiscal year.

Senate amendment.—The Senate amendment contains an identical provision to the House amendment.

Conference substitute. This provision is contained in the substitute.

Section 505—Railroad hiring

Senate bill. No provision.

House amendment. The House amendment provides for a right of first hire on other rail carriers for protected separated, or furloughed employees of Conrail. This right would not apply if an employee was separated for cause, or found to be less qualified than other applicants. The right would also not apply to any vacancy covered by a required or permissible voluntary affirmative action plan. This right is similar to that granted Milwaukee and Rock Island employees by recent legislation.

Conference substitute. This follows the House provision.

Section 506—Single collective-bargaining agreement

Senate bill. No provision.

House amendment. No provision.

Senate amendment. The Regional Rail Reorganization Act of 1973, as amended, was based on a recognition that Conrail could succeed only if the predecessor bankrupt roads' operations were combined into a unified system.

A major component of that integration was addressed by section 504(d) of the 3R Act which required representatives of the various classes or crafts of the bankrupt carriers and representatives of Conrail to enter into negotiations for a single collective bargaining agreement for each class and craft of employees. This section was motivated by a recognition that the near countless existing labor agreements had to be replaced by negotiated collective-bargaining agreements for each class and craft.

Such negotiations were commenced and substantial progress has been made toward the goals of the Act. As a significant example, the United Transportation Union and Conrail, after extensive bargaining, concluded an agreement having far reaching effects on labor costs of train movements while allowing the United Transportation Union members to share in the resulting savings. However, continued implementation of this collectively bargained agreement is imperiled by the findings of a U.S. Magistrate in the case of *Maloof v. United Transportation Union and Conrail*, issued March 27, 1980.

As the result of a suit brought by minority members of the union who wish to block the agreement, the U. S. Magistrate has concluded, among other things, that section 504(d) of the 3R Act does not require the negotiation of a single agreement for each class or craft. As a finding of fact, this conclusion must be considered to have a substantial likelihood of adoption by the Federal District Court. Such an adoption would, in all likelihood, be accompanied by an order effectively terminating the United Transportation Union-Conrail agreement and allowing the continuation of regional distinctions in treatment among members of the same class or craft in opposition to the conclusions of the Final System Plan, and the clearly stated policy of Congress. Revocation of the detailed and comprehensive Crew Consist Agreement, on the strength of findings by a Magistrate, not only denies its benefits to a large number of United Transportation Union members but wipes out needed savings for Conrail.

Conference substitute. The Conference substitute follows the Senate bill, with a clarifying sentence added to ensure that such a single collective bargaining agreement is negotiated systemwide. This follows the historical policy of the National Mediation Board that crafts or classes are to be certified systemwide, and negotiations conducted on a similar basis.

This section will make it absolutely clear that the intent of Congress was in 1973, has remained, and is today that Conrail is entitled to a single collective bargaining agreement with each craft or class of workers. The Magistrate's opinion was premised on what he described as an ambiguous phrase in the existing statutory language. This section should make it clear that the intent of Congress is that Conrail is entitled to a single agreement for each class and craft.

Section 507—Employee protection payments

Senate bill. No provision.

House amendment. The House amendment provided an effective date for the new formulas of the first day of the month following enactment.

Senate amendment. The Senate bill provides that the new formulas are to be effective on the first day of the month following enactment. The Corporation and other employers with protected employees were to be reimbursed effective October 1 for any protective payments not previously reimbursed.

Conference substitute. The Conference substitute adopts October 1, 1980 as the effective date.

Section 508—Technical amendments

Senate bill. No provision.

House amendment. The House amendment makes technical changes to the Regional Rail Reorganization Act of 1973 and adds the Attorney General to the Board of Directors of the United States Railway Association.

The Secretary of Transportation and the Secretary of the Treasury are authorized to delegate their responsibilities under the 3R Act, including membership on the Board of Directors of the USRA and its committees, to the following designated representatives. The Secretary of Treasury may designate any officer of the Department whose position is confirmed by the Senate. The Secretary of Transportation is authorized to designate as his representative the Deputy Secretary, the General Counsel, the Federal Railroad Administrator, or the Deputy Federal Railroad Administrator.

Subsection (d) amends the definition of "deprived of employment" in subsection 501 (6) to exclude from the definition, and thereby excludes from coverage under the protection program consistent with changes made in section 4 of this legislation, failure to work due to Acts of God. Subsection (d) also adds a definition of "compensation" to section 501 so that it is clear the word means only earnings in employment subject to the Railroad Retirement Act rather than such earnings plus earnings from non-railroad employment and compensation for personal injury claims against the employer.

Finally, subsection (e) clarifies that the arbitration provisions that apply to disputes between the Corporation and its employees regarding the interpretation of Title V provisions do not restrict the newly-created audit and reporting responsibilities of the USRA.

Senate amendment. The Senate amendment is similar to the House amendment but does not add the Attorney General to the Association's Board of Directors.

Conference substitute. The Conference substitute follows the House amendment, but deletes the provision to include the Attorney General on the USRA Board of Directors.

Section 508(f) of the House amendment alters section 403(d) of the Rail Passenger Service Act to enable Amtrak greater flexibility in contracting for compensation for providing commuter services with the states. At present, the level of compensation is fixed at the "avoidable cost" level. Conferees expect that this provision will enable Amtrak to have the flexibility to contract for the value of services rendered and not result in commuter revenues below avoidable cost.

Section 601—Expedited supplemental transaction proposals

Senate bill. No provision.

House amendment. The House bill amends section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) by providing that the Secretary of Transportation shall determine after comments from interested parties whether to propose a supplemental transaction under this section for the transfer of all rail properties of Conrail in Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that another rail carrier is financially and operationally capable of assuming Conrail's freight operations and freight service obligations in the area, that the transfer would promote the establishment and retention of a financially self-sustaining rail system in Connecticut and Rhode Island adequate to meet the needs of those states, and that the transfer would minimize job losses and associated increases in unemployment, should the Secretary develop such a proposal. After providing USRA and the ICC with an opportunity to review and comment on the proposal, the Secretary may petition the special court for an order to carry out the proposed transfer.

Notwithstanding any existing 508 agreements, a new employment agreement would be entered into between the parties to the transfer and affected employees pursuant to section 508. These agreements would involve the Corporation, but would not impose additional obligations on the Corporation, which is neither an acquiring nor a selling carrier for the purposes of section 509.

The bill would also allow further supplemental transactions under the normal procedures of section 305 to occur by deleting the six year time limit provided in section 103(19) of the Act.

Conference substitute. The Conference substitute adopts the House provision, but allows the States of Connecticut and Rhode Island to comment formally. The time period is also extended to 240 days.

If a proposal is sent to the Special Court, the Special Court shall use the procedures of existing section 305. If a transferee railroad is unwilling to accept the fair and equitable price established by the Secretary, the Secretary need not petition the Special Court. The Special Court may review the proposal to determine if it is in the public interest.

Section 701—Rock Island and Milwaukee Railroads amendments

Senate bill. No provision.

House amendment. The House amends the Rock Island Transition and Employee Assistance Act and the Milwaukee Railroad Restructuring Act in several instances. The amendment provides that any decision with respect to constitutionality of the Rock Island Transition Act or the Milwaukee Railroad Restructuring Act from the respective courts having jurisdiction over the respective railroads in bankruptcy shall be taken to the United States Court of Appeals for the Seventh Circuit. If a constitutional challenge is made to the procedure under this provision, the challenge shall be heard by the United States Court of Appeals for the Seventh Circuit because the procedure is part of the Rock Island Transition Act. Should the appeals on constitutionality involve section 106 or section 110 of the Rock Island Transition Act or sections 9 or 15 of the Milwaukee Railroad Restructuring Act, regarding the claim of administration for employee protection claims, the court shall determine the appeals in a consolidated proceeding and render a final decision no later than 60 days after the last such appeal is filed.

The House amendment clarifies the Rock Island Transition and Milwaukee Railroad Restructuring Act to state affirmatively that nothing in these Acts shall limit the right of any person to bring an action under the Tucker Act. This provision was not in the original Acts on the grounds that there continued to exist a Tucker Act remedy where Congress has not explicitly waived such a remedy. See Regional Rail Reorganization Cases, 419 U.S.102; 125 (1974). However, in reviewing Judge Garr's injunction of the Rock Island Transition Act, Justice Stevens expressed concern about the availability of such a remedy where the injunction to be lifted and were the Act subsequently to be held unconstitutional, ——— U.S. ——— (1980). This specific provision clearly establishes that the Tucker Act is available and nothing in these Acts limits the right of any person to seek redress under the Tucker Act.

The House amendment provides for a new schedule for the negotiation of an employee protection agreement between the Rock Island Railroad and the Labor organizations. If these parties are not able to come to an agreement within 5 days, the Commission is to impose a fair and equitable arrangement no less protective of the interests of employees than the protection established under section 9 of the Milwaukee Railroad Restructuring Act within 15 days after the enactment of the Staggers Rail Act. The bankruptcy court shall order the Rock Island Trustee and the Rock Island employee organizations to implement such arrangement immediately. Any order of the Commission or the bankruptcy court with respect to implementing such order shall be appealed only to the United States Court of Appeals for the Seventh Circuit within 5 days after the order of the Commission or the bankruptcy court, whichever is later, and shall be determined within 60 days after the appeal is filed. Benefits and allowances under this arrangement shall be paid by the Rock Island Railroad and shall be treated as administrative expenses of the estate of the Rock Island Railroad. By specifically stating that there is a Tucker Act remedy, the benefits and allowances will immediately become available to the qualifying Rock Island employees and the Trustee may pursue his allegations of unconstitutional action under the Tucker Act.

Under Section 7(d), (e), and (f) of the Milwaukee Railroad Restructuring Act, certain obligations to the United States were subordinated to the creditors, but not the stockholders. Hence, there is a gap between these two classes of interests. The House amendment eliminates this gap, by forgiving such subordinated obligations to the United States when the Milwaukee Railroad is either successfully reorganized as a rail carrier or when more than 50% of the railroad as it exists on the effective date of the Staggers Rail Act is purchased and 50% of its employees on that date have obtained employment with other carriers. By eliminating this gap in this way, the House amendment will encourage the Milwaukee Railroad's stockholders to seek a successful reorganization or purchase and not feel it necessary to seek liquidation at this time.

Additional funds for Transaction Assistance under the Rock Island Transition Act for the purchase of abandoned lines by non-rail carrier entities of the Rock Island Railroad and Milwaukee Railroad and for rail banking of Lines of the Milwaukee Railroad in Montana are made available. The Secretary may determine if applications for purchase filed after September 15, 1980, are appropriate. Other than the funds specifically reserved for Montana, Transition Assistance funds should be equitably distributed without State preference to non-carrier entities which have applied for funds.

Conference substitute. The Conference substitute adopts the House provision, with minor modifications and deletion of the new findings for the Rock Island Transition Act. The conferees believe that there is an obligation upon the Rock Island estate to provide employee protection as a claim of administration to its employees who were not covered by the March 4, 1980, agreement. Further, the conferees believe the Rock Island estate has benefitted from the Rock Island Transition Act by the reduction in its employee protection liability and through the Congressionally-supported March 4, 1980, agreement, the ability to lease its facilities and the use of funds to purchase its facilities, thus preserving its value as a going concern, and the expeditious consideration of Rock Island transactions at the Commission. The conferees reiterate that it is the intention of Congress that employee protection be imposed in bankruptcy proceedings involving major rail carriers, for to do otherwise would be to promote liquidations, to the detriment of the employees and the public interest.

Section 702—Loan guarantees

Senate bill. No provision.

House amendment. The House amendment provides that the Secretary of Transportation shall not later than 45 days after the effective date of this Act, take final action on any application for a section 511 loan guarantee under the Railroad Revitalization and Regulatory Reform Act to be used in connection with joint ownership, construction or rehabilitation of any facilities for a second rail carrier to serve the Powder River Basin in Wyoming and Montana. This provision is included to promote needed competition for transportation of the low-sulfur coal from the Powder River Basin that is used by a great number of utilities in many states.

The Secretary is authorized to waive findings under 511(g) with respect to such loan guarantees, and section 4(f) of the Department of Transportation Act is not applicable to such loan guarantees. However, the Secretary shall review the proposed Chicago and North Western connector and shall not approve any route which requires the use of agricultural land unless there is no feasible and prudent alternative to the use of such land and the proposed route construction plan requires all possible planning to minimize loans to such agricultural land. The Secretary shall review the use of any agricultural land in any new constructed line and shall require private land crossings for agricultural land owners whose land is divided by such line. When the Secretary requires the construction of a grade crossing, the Secretary shall require the land owner and the railroad to enter into agreements limiting the railroad's liability at such crossings.

Conference substitute. The Conference substitute adopts the House amendment, but substitutes provisions regarding standards and deadlines for judicial review instead of the Secretary's discretion to waive findings under section 511(g) of the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210). It also makes clear that actions can be taken without prior approval of any Committee of Congress.

The standards and deadlines are borrowed from the Alaska Natural Gas Transportation Act, 15 U.S.C. 719h, and the Administrative Procedure Act, 5 U.S.C. 706. The reference to the phrase, "arbitrary, capricious, or an abuse of discretion" is an adaptation of 5 U.S.C. 706(2)(A). The reference to "in excess of statutory jurisdiction, authority or limitations, or short of statutory right" is an incorporation of the grounds for review provided in section 706 (2)(C). The Conferees wish to emphasize that the other grounds for review set forth in section 5 U.S.C. 706(2) not in this section are intentionally excluded. Judicial review is to be confined to considerations of whether the agency complied with the Constitution and acted within its authority.

Section 703—Conrail studies and emergency funding and USRA authorization

Senate bill. The Senate bill requires USRA to submit preliminary recommendations by November 15, 1980, with regard to Conrail's future structure, activities and funding. Following review by the Department of Transportation and the Commission, and comment by interested parties, USRA is required to submit to Congress by March 1, 1981, specific final recommendation with respect to (1) future projected funding requirements of Conrail; (2) future structure and activities of Conrail in the region; and (3) legislative proposals, if necessary, to implement such recommendations. The Senate provisions also require specific studies to be completed in developing preliminary and final recommendations. Conrail is required to submit recommendations to USRA by October 1, 1980; it is also free to comment on the Association's preliminary and final recommendations. The provision includes an USRA authorization of $31.5 million for fiscal year 1981 and $27.5 million for fiscal year 1982.

A separate title of the Senate bill provides emergency funding for Conrail of $329 million for fiscal year year 1981. This provision is intended to provide interim Federal funding for Conrail while Congress identifies alternative measures, including structural changes, based on the various studies and recommendations discussed above. The funding is conditioned upon a finding by the Finance Committee under section 216(b) of the Regional Rail Reorganization Act of 1973, as amended, that Conrail has taken appropriate action to eliminate losses on light density and unprofitable lines through negotiation of subsidy or trackage rights agreements, sale or lease, imposition of surcharges or abandonment of such lines. Expedited surcharge and abandonment procedures are provided for these light density and unprofitable lines. In addition, the Senate bill requires an economic analysis that will forecast the full effects upon Conrail and rail labor of alternative changes in labor agreements and related operational changes.

House amendment. The House amendment does not contain any provision on Conrail studies or emergency funding. It provides an authorization for USRA of $28.5 million for fiscal year 1981.

Conference substitute. The Conference substitute generally adopts the Senate provision with regard to Conrail studies. However, Conrail is given a larger role and will be required to submit a separate report and recommendations at the same time as USRA on the carrier's future funding requirements, future structure and activities, and legislative action which might be required. Conrail is to submit preliminary projections and recommendations to USRA by January 1, 1981. The report and recommendations of USRA and Conrail are to be submitted to Congress no later than April 1, 1981.

The Department of Transportation is to submit its recommendations by that same date, and there is a provision for comment by the Commission.

The Conference substitute adopts the Conrail emergency funding authorization of $329 million for fiscal year 1981. It retains the Senate provision for an affirmative finding by the Finance Committee that Conrail has taken appropriate action to eliminate losses on light density lines and other lines which are unprofitable. However, since the rail bill contains separate surcharge and abandonment provisions, the expedited Conrail surcharge and abandonment procedures have been deleted. The Conferees stress, however, that Congress in-

tenis, as a condition of the emergency funding, that Conrail proceed to eliminate or reduce its losses on unprofitable lines and implement such cost conservation measures as are feasible to minimize the needs for additional Federal funds.

Earlier this year, in the Passenger Railroad Rebuilding Act, Congress established the goal of eliminating congestion of rail freight and rail passenger traffic along the Northeast Corridor. At that time, Congress also authorized funds to begin the diversion of freight around Baltimore. It now appears that still more freight may be diverted off the corridor by cooperation between Conrail and the Delaware and Hudson Railroad and that no authorization of appropriations is required to divert additional traffic off the corridor by the negotiations of trackage rights between Conrail and the Delaware and Hudson. Accordingly, the Conferees express their hope that these negotiations will successfully divert additional freight off the corridor and direct the United States Railway Association to monitor these negotiations and to report on their progress to the respective committees.

Section 704—USRA authorization of appropriations

Senate bill. The Senate bill contained a 2 year authorization of $31.5 million in fiscal year 1981 and $25.5 million in 1982.

House amendment. The House amendment contained a 1 year authorization for $28.5 million.

Conference substitute. The Conference substitute provides a 1 year authorization of $30 million for fiscal year 1981.

Section 705—Feeder line rehabilitation study

Senate bill. No provision.

House bill. Section 231 of the House bill created a Rail Technology and Shippers Needs Board. This Board is to consist of the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Labor, the Chairman of the Interstate Commerce Commission, and two shipper representatives from national agricultural organizations appointed by the President. The Board is given authority to conduct studies of technological means to improve rail productivity and the continuing transportation needs of urban and rural shippers.

Section 231 of the House bill also provides for a study of the revenue impact and public benefits of exempting from taxation State or local government obligations incurred in connection with the rehabilitation of railroad feeder lines. The report must include criteria as may be necessary to prevent the abuse of the special tax status given under this section.

Conference substitute. The Conference Substitute deleted the Rail Technology and Shippers Needs Board but retained the study of the impact of exempting State or local government obligations incurred in connection with the railroad feeder lines. It is anticipated that this report will include recommendations regarding the types of railroad properties and services which ought to be eligible for State or local government obligations which are exempt from taxation; ways to narrow the applicability of this special issue to ensure that such obligations will be issued only for productive rail rehabilitation or acquisition projects; and ways to ensure coordination with Federal, State and local rail programs.

Section 706—Effect on pending matters

Senate bill. No provision.

House amendment. The House bill contains a provision which states that all applications or proceedings pending before the Commission or other agencies, or any court, shall be determined as if this law had not been enacted.

Conference substitute. The conference substitute deletes the House provision, but clarifies that existing rate bureau proceedings shall be conducted under the law prior to the enactment of this Act. The House bill, as passed, contains a section determining the effect of this legislation on pending matters. The fact that the Conference substitute does not contain a similar provision is not intended to create any implication that other cases now pending at the Commission, other affected agencies, or pending in the Federal courts are not to be adjudicated or determined under existing law or the new legislation in accordance with controlling case law. The deletion of these provisions means that existing cases at the Commission, other affected agencies, or pending in the Federal courts, shall be determined as present case law requires that they be determined.

If a case is pending in Federal Court or has been remanded to the Commission, the Conferees intend that the rate ultimately determined by the Commission shall be considered the rate in effect on the date of enactment for the purposes of this Act.

Section 707—Construction of amendments

Senate bill. Same as the House bill.

House amendment. The House amendment provided that the amendments made by this Act should not be construed to modify the existing law with respect to competition and coordination as it affected the relationship between water carriers and rail carriers.

Conference substitute. The provision contained in this section, which qualifies each provision of each section of this Act, is designed to make clear that none of the provisions of the Act modifies existing law to make lawful a rate or practice that was unlawful on the day prior to enactment. Also the Conferees intend that this section allow water carriers to challenge practices that were unlawful as unfair, destructive, predatory, or otherwise undermined competition prior to enactment of this Act. In addition, of course, the Conferees do not intent to limit the right of water carriers to exercise their rights and remedies under the provision of the Interstate Commerce Act as amended by the Staggers Act of 1980 regardless of whether those rights and remedies are related to practices which are unfair, destructure, predatory or otherwise undermine competition.

The intent is that none of the amendment made by this Act is to be used to legitimize the undermining of rail-water competition. Railroad rates and practices that affect rail-water competition that are unfair, destructive, predatory, or otherwise undermine competition, and that were unlawful immediately prior to enactment of this Act shall continue to be prohibited. Similarly, no change made by this Act makes lawful any other railroad rate or competitive practice that is unfair, destructive, predatory or otherwise undermines competition.

Section 708—Surplus equipment

Senate bill. No provision.

House amendment. The House amendment makes Conrail eligible to borrow excess equipment from the Department of the Army. Now, the effected community must pay a rental fee of the fair market value, which is too high for most local communities. The amendment would set up a two-step process for obtaining the needed equipment (bridge for example). The first would be an application by Conrail to the Army for a contract to borrow the bridge; this would occur only after Conrail has determined that public safety required such action. After Conrail and the Army have concluded negotiations, Conrail would enter into a contract with the local community to pay for the transportation of the bridge to the site and for routine maintenance.

While the language of the amendment is general, it is specifically aimed at solving a problem in the city of Niles, Ohio, where the West Park Avenue Bridge going over Conrail tracks was damaged and traffic is now being rerouted through a public park. This creates a hazardous and dangerous condition for the many children in the area.

Conference substitute. Conference substitute adopts the House provision.

Section 709—Study of Alaska Railroad rates

Senate bill. No provision.

House amendment. The House amendment requires, within 6 months after the effective date of the legislation, the Commission to complete a study to determine whether certain rates charged by the Alaska Railroad would, if such rates were entered into after the enactment of the legislation, have violated Section 10701a(c)(1) of Title 49 U.S.C. as amended by the House amendment.

Conference substitute. The Conference substitutes follows the House amendment. Allegations have been made that the Alaska Railroad has been engaged in predatory pricing to the injury of its privately-owned competitors. It has also been alleged that the Alaska Railroad has the capacity to engage in such activity because it is Federally owned and subsidized, while its competitors are totally unsubsidized. Clearly, such conduct would be contrary to sound public policy.

Accordingly, an investigation by the Commission is ordered by this Act. It is expected that the Commission will conduct a careful, impartial analysis of the controversy, weighing all the facts and arguments of the interested parties, and making available its analysis and supporting data for public comment prior to rendering a final report to Congress. The Department of Transportation and other federal agencies are expected to cooperate fully with the Commission in the conduct of the investigation.

The Commission's study is to be coordinated with a study by the State of Alaska.

Section 710—Effective dates

Senate bill. No provision.

House amendment. The House amendment provides that the provisions of this Act and the amendments made by this Act shall take effect October 1, 1980, except certain sections dealing with the Conrail employee protection.

Conference substitute. The Conference substitute adopts the House amendment, but clarifies that the amendments to the Rock Island Transition and Employee Assistance Act in section 227 are effective upon enactment.

APPENDIX A

INTERSTATE COMMERCE COMMISSION,
Washington, D.C. September 16, 1980.

Hon. J. JAMES EXON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EXON: This is in reply to your letter of September 11 asking for my interpretation of the Commission's authority regarding demand-sensitive rates if Section 210 of H.R. 7235 (The Rail Act of 1980) were enacted. As your letter points out, Section 210 repeals the existing section of the Interstate Commerce Act which requires the Commission to maintain standards and procedures to permit the establishment of demand-sensitive rates. In my view, repeal of this section will lead the Commission to repeal its existing regulations regarding demand-sensitive rates and to refuse to initiate new rulemakings on this subject.

I hope this addresses your concerns about the Commission's interpretation of existing and pending legislation. I would, of course, be pleased to discuss this with you at any

time. If legislation is enacted, I look forward to working closely with you and other members of Congress who have devoted so much effort to bringing a rail bill to fruition.

Sincerely yours,

DARIUS W. GASKINS, Jr.,
Chairman.

APPENDIX B

CHICAGO & NORTHWESTERN TRANSPORTATION CO.,
September 26, 1980.

Hon. J. J. EXON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EXON: We know you are concerned with our plans for the future of our east-west line between the Wyoming State line and the Mississippi River. Please be advised we have no intention of abandoning this line.

The construction of, and successful operation of, our proposed connector line to the Union Pacific near Joyce, Nebraska, not only will not endanger the east-west line, but will enhance its future. Revenues derived from the coal project will make this railroad stronger and better able to maintain this line, which performs a useful service for the citizens of Nebraska.

It is our purpose to maintain this line in condition to respond to service needed by your citizens. As we become stronger, we are better able to increase the quality of this line and our other lines in Nebraska. However, I would like to emphasize that we do have an ongoing program which has resulted in substantial investment. For the period from 1974 to 1979 we have invested $36,456,000 in maintenance and capital in this line. Obviously, it is our intention to continue maintenance and investment at this level or, hopefully, greater.

Sincerely,

JEROME CONLON,
Senior Vice President.

HARLEY O. STAGGERS,
JAMES J. FLORIO,
JOHN M. MURPHY,
BOB ECKHARDT,
JIM SANTINI,
BARBARA A. MIKULSKI,
ROBERT T. MATSUI,
JAMES T. BROYHILL,
EDWARD R. MADIGAN,
TOM LOEFFLER,
GARY A. LEE,
Managers on the Part of the House.

HOWARD W. CANNON,
RUSSELL B. LONG,
J. JAMES EXON,
BOB PACKWOOD,
NANCY LANDON KASSEBAUM,
Managers on the Part of the Senate.

PERMISSION TO CONSIDER PRIVATE CALENDAR ON THURSDAY NEXT

Mr. MURTHA. Mr. Speaker, I ask unanimous consent that the House be permitted to consider the Private Calendar on Thursday next.

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

There was no objection.

REQUEST FOR PERMISSION TO FILE CONFERENCE REPORT ON H.R. 5612, SMALL BUSINESS ADMINISTRATION PILOT PROGRAMS FOR BUSINESSES OWNED BY DISADVANTAGED PERSONS

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent the managers may have until midnight tonight to file a conference report on the bill (H.R. 5612) to amend section 8(a) of the Small Business Act.

The SPEAKER. Is there objection to the request of the gentleman from Iowa?

Mr. PICKLE. Mr. Speaker, reserving the right to object, will the gentleman state the conference bill number?

Mr. SMITH of Iowa. H.R. 5612.

Mr. PICKLE. Mr. Speaker, I regret very much I have to object to this request. There is a serious matter of jurisdiction between the Committee on Ways and Means and this bill on which a conference report is being asked to be filed, and I object.

The SPEAKER. Objection is heard.

COMMUNICATION FROM THE CHAIRMAN OF COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

The SPEAKER laid before the House the following communication from the Chairman of the Committee on Public Works and Transportation; which was read and referred to the Committee on Appropriations:

WASHINGTON, D.C.,
September 24, 1980.

Hon. THOMAS P. O'NEILL,
The Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Pursuant to the provisions of the Public Buildings Act of 1959, as amended, the House Committee on Public Works and Transportation approved the following projects on September 23, 1980:

DIRECT CONSTRUCTION

Vancouver, Washington, Federal Building Extension.

Redding, California: Courthouse and Federal Office Building.

LEASES

East Point, Georgia: Federal Aviation Agency, 3400 Whipple Street.

Washington, D.C.: Environmental Protection Agency.

Portland, Oregon: Bonneville Power Administration/Other Agencies.

San Bernardino, California: Department of Defense, 1111 East Mill Street.

The original and one copy of the authorizing resolutions are enclosed.

Sincerely,

HAROLD T. (BIZZ) JOHNSON,
Chairman.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, D.C.,
September 26, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: On September 25, 1980, I was served with a subpoena from the United States District Court for the District of Maryland for certain official records within my custody. The subpoena was issued upon application of the United States Attorney, signed by the Deputy Clerk of the Court.

Pursuant to the provisions of House Resolution 722, adopted on September 17, 1980, this is to notify you of the receipt of the subpoena. Also in accordance with House Resolution 722, I have this day sent a copy of the Resolution to the Court as required by Section 7 of the Resolution.

The subpoena is available for inspection by Members in my office.

Sincerely,

EDMUND L. HENSHAW, Jr.,
Clerk, House of Representatives.
By W. RAYMOND COLLEY,
Deputy Clerk.

□ 1810 GENERAL REVENUE SHARING EXTENSION ACT

The SPEAKER. Under a previous order of the House, the gentleman from New York (Mr. CONABLE) is recognized for 60 minutes.

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

Mr. CONABLE. Mr. Speaker, I do not intend to take my 60 minutes tonight. It is my understanding that the General Revenue Sharing Extension Act which was to be taken up tomorrow night, because of the heavy political schedule, will probably not be taken up now until after the election.

Tomorrow night the revenue sharing program will expire. I am deeply distressed at the decision to put this over. It amounts to, with respect to local government, a real estate tax increase of roughly $4.7 billion. Of course, the States' share which was roughly a third of the total program has already been permitted to go by the boards by the Committee on Government Operations, for fiscal year 1981. There was some hope that it could be reconstituted by fiscal years 1982 and 1983 although it would be subject to appropriation rather than entitlement for those 2 years.

This program which I think was one of the most vital programs in the Federal system, in contrasting to the categorical grant program totaling, rather than $7 billion, $92 billion, is a serious loss to our total complex of Federal programs, if it is permitted to expire.

I am convinced that after the election, very little is likely to be done on the Federal revenue sharing because we have lost the accountability imposed by the election season when local government officials and Governors will be able effectively to express their great concern over the transfer of this progressive tax money into an area previously nourished entirely by regressive taxation.

Mr. Speaker, I intend to speak about this at some length later on but at this point I wish to express only my great disappointment that because of the pressures of the political season, because of the obligations that we seem to have imposed on ourselves politically tomorrow night, because of the apparent preference that the leadership has for a very large number of suspensions, small special interest issues, because of the imminence of the political program of the President relating to unemployment insurance extension, this revenue sharing program is being permitted to languish and, I fear, ultimately to expire.

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

LEGISLATIVE HISTORY
P.L. 96-448

STAGGERS RAIL ACT OF 1980

P.L. 96-448, see page 94 Stat. 1895

Senate Report (Commerce, Science, and Transportation Committee) No. 96-470, Dec. 7, 1979 [To accompany S. 1946]

House Report (Interstate and Foreign Commerce Committee) No. 96-1035, May 16, 1980 [To accompany H.R. 7235]

House Conference Report No. 96-1430, Sept. 29, 1980 [To accompany S. 1946]

Cong. Record Vol. 126 (1980)

DATES OF CONSIDERATION AND PASSAGE

Senate April 1, October 1, 1980

House September 9, 30, 1980

The Senate bill was passed in lieu of the House bill after amending its language to contain much of the text of the House bill. The House Report (this page) and the House Conference Report (page 4110) are set out.

HOUSE REPORT NO. 96-1035

[page 1]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7235) to reform the economic regulation of railroads, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

. . . . . .

[page 33]

Purpose and Summary

The reported bill consists of eight titles. Title I provides for a rail transportation policy to allow competition and the demand for services to establish reasonable rates, to the maximum extent possible; to promote a safe and efficient rail system by allowing rail carriers to earn adequate revenues; to provide rate regulation where there is an absence of competition and rail rates provide revenues which exceed the amount necessary to maintain the system and attract capital; to require rail carriers to the maximum extent practicable to rely on individual rate increases; and to ensure the availability of accurate cost information.

Title II provides the Commission with jurisdiction to determine rate reasonableness only when there is no effective competition. When determining the reasonableness of rates, the Commission is to recognize the policy that rail carriers shall earn adequate revenues. It authorizes the use of contracts between one or more carriers and one or more

shippers to provide specified services under agreed upon rates and conditions. Rate increases are limited to 10 percent per year, above inflation, until 1983 except on surcharges, rates over which the Commission has jurisdiction and rate increases which result in a revenue-variable cost ratio of less than 150 percent. Beginning in 1983, the Commission may, on a semi-annual basis, prescribe a percentage rate increase or index, either carrier by carrier or industry-wide, in order to compensate railroads for inflationary cost increases. The Secretary may notify the Commission that a rail carrier does not meet Federal safety standards and is not operated in a safe manner. Upon receipt of such a notification, the Commission may use its existing authority to review the financial arrangements of the carrier and prohibit any financial transactions which would unreasonably impair the ability of the carrier to meet safety requirements and operate safely.

Title III permits carriers that participate in a joint rate to surcharge or cancel joint rates in order that such carrier may receive at least 110 percent of its variable costs for its share of the joint movement. This title ensures competitive ratemaking by phasing out certain activities of rate bureaus.

Title IV establishes a Railroad Cost Accounting Standards Board for the purpose of developing cost accounting principles which identify variable costs which accurately represent the economic costs of rail movements. The Commission is charged with promulgating rules to implement and enforce the principles developed by the Board.

Title V authorizes appropriations to provide financial assistance for railroad restructuring and the development of feeder railroad lines.

Title VI amends the Regional Rail Reorganization Act of 1973 by increasing the funds authorized to be appropriated for the monthly displacement allowances for protected Conrail employees, and alters the benefits for which such employees are eligible.

Title VII amends Section 305 of the Regional Rail Reorganization Act of 1973 by increasing the authority of the Secretary to develop proposals for additional restructuring through transactions supplemental to the final system plan by transferring Conrail property to another carrier(s). The Secretary may undertake the development of a proposal on his own initiative or upon the request of a state or other political subdivision, a railroad or shipper(s).

Title VIII provides that the provisions of this Act take effect on October 1, 1980. This title clarifies that the enactment of this Act is not meant to alter existing law regarding the relationship between water carriers and rail carriers.

Background and Need for Legislation

The Committee is concerned about the financial plight of the railroad industry. In 1978, the Department of Transportation in its report to Congress—"A Prospectus For Change In The Freight Railroad Industry"—concluded that the industry between 1976 and 1985 would have a capital shortfall of between 13.1 and 16.1 billion dollars. In current dollars, that shortfall is between 16 billion dollars and 20 billion dollars.

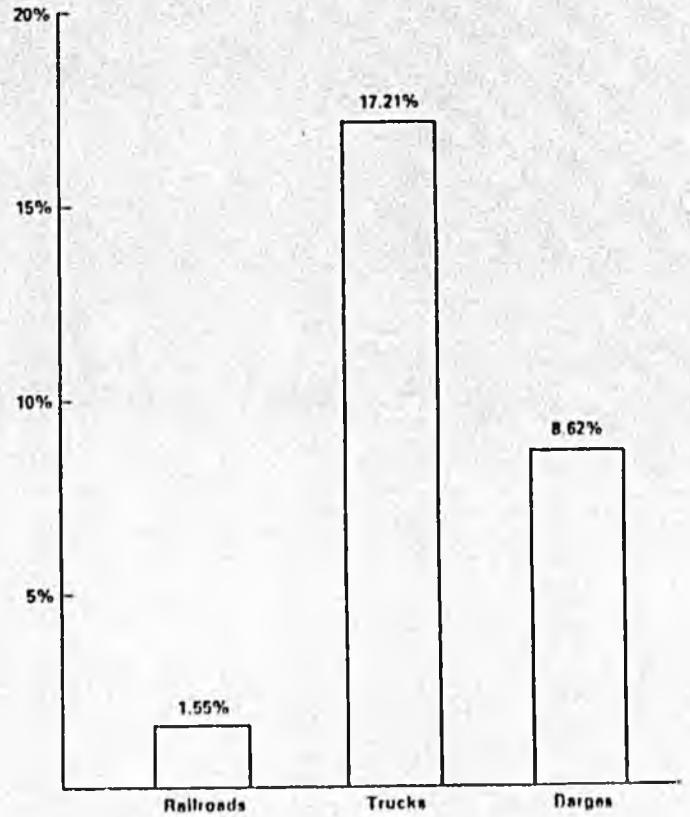
Current earnings of the railroad industry are inadequate to meet existing or anticipated capital needs. There is no reason to believe that railroads operating in the present regulatory environment will improve their earnings. The railroads rate of return on investment has not exceeded three percent since 1966 and persistent low profit levels have plagued the industry since the end of World War II. Appendix A of this report contains background materials prepared by the Committee which details some of the reasons for the industry's poor performance.

The railroad industry has been regulated since 1887. While the pervasiveness of government railroad regulation has grown over the years, the development of less regulated or unregulated transportation competition has also grown. Both motor carrier and water carrier competition have continued to take intercity transportation business away from the railroads. Today, the once dominant railroad industry accounts for but 36 percent of the inter-city ton miles of freight. In 1947 railroads had twice the market share. Between 1947 and 1977, the economy (real GNP) grew 185 percent. Industrial production during that time increased 256 percent and tons of inter-city freight increased 91 percent. The railroads, however, carried 91 percent fewer tons in 1977 than they did in 1947. The railroads decline in business has been not only in market share, but in actual tons carried.

In absolute terms, the number of tons of freight picked up regardless of distance traveled, trucks now carry almost 50 percent more tonnage than the railroads. In 1947, railroads were hauling three times as much tonnage as motor carriers.

Neither trucks nor barges are as extensively regulated as railroads. About 43 percent of truck inter-city ton miles is regulated and only about 10 percent of barge inter-city ton miles is regulated, while 100 percent of all railroad business is regulated. The following chart which shows rate return on equity for 1978 demonstrates one of the major differences caused by disparity of regulations among the transportation modes:

RATE OF RETURN ON EQUITY 1978

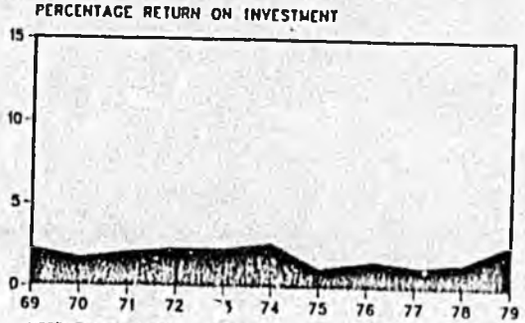


SOURCES Interstate Commerce Commission

The Committee does not dispute the findings by the Department of Transportation that the railroad industry has a huge capital shortfall between now and 1985. Failure to overcome that capital shortfall will mean a continued deterioration in the railroad service which will have the effect of driving more shippers away from railroads thereby making it more difficult for the industry itself to generate the revenue it needs. During the 1970's and in this Congress the Committee has seen the results of inadequate revenue generation within the railroad industry. Seven bankrupt railroads created the need for the establishment of Conrail. During this Congress the Committee has had to

address both the Milwaukee and Rock Island bankrupteies through special legislation. Nearly 30 percent of railroad business is today carried in whole or in part by financially weak railroad carriers. The following graph shows the low rate of return for the railroad industry over the last 10 years.

RAILWAY RETURN ON NET INVESTMENT
HAS BEEN INADEQUATE



NOTE: Rates of return shown above would be lower if adjusted for tax treatment.

Source: Railroad Reports to ICC

The industry's low rate of return has caused greater and greater reliance on outside financing. The following table dramatizes both the increasing need for railroad investment and the increasing dependence on outside financing.

RAILROAD RELIANCE ON OUTSIDE FINANCING HAS INCREASED

Year	Total investment (millions)	Retained funds[1] (millions)	Retained funds as percent of total investment
1969	$1,509.4	$815.6	54.0
1970	1,351.4	618.0	45.7
1971	1,137.8	761.1	66.6
1972	1,215.6	921.1	75.9
1973	1,342.1	964.1	71.8
1974	1,565.4	1,090.8	69.7
1975	1,289.7	621.2	48.2
1976	1,224.7	682.6	55.7
1977	1,290.4	762.8	59.1
1978	1,335.5	749.8	56.1

[1] Registrants income before extraordinary items, plus deferred taxes and depreciation and retirement charges, less cash dividends and equity in undistributed earnings of affiliated companies.

Source: Railroad reports to the ICC.

Needless to say, increasing interest costs represent another discouragement in overcoming the capital needs shortfall facing railroads.

Railroads are 100 percent regulated under Subtitle IV of Title 49. Parts I and II of the background materials contained in the Appendix detail the extent of Federal regulation. The overall effect of that regulation has meant that railroads have been severely handicapped in their ability to compete with other modes of transportation. The Committee notes with alarm that the railroads' decline in market share seems to cut across almost all areas of freight transportation. For example, for the transport of machinery, except electrical and industrial, railroads hauled 52 percent of ton miles in 1963 but only 38 percent in 1972. With basic textiles and leather products, railroads hauled 25 percent in 1963 but only 16 percent in 1972. For drugs, paints, and other chemical products, railroads hauled 62 percent of the ton miles in 1963 but only 44 percent in 1972. For meat and dairy products, the rail ton mile haul in 1963 was 47 percent and only 28 percent in 1972. For fabricated metal products, rail hauled 41 percent in 1963 and only 23 percent in 1972. Those declines taken from the Census of Transportation of 1963 and 1972 respectively are repeated in almost every commodity group.

The decline has continued since 1972 and can best be seen by looking at traffic once very dependent upon the railroads. For example, railroads no longer dominate grain traffic. In 1973, 58 percent of the grain sold originated on rail. In 1974, that percentage was 62 percent but it has dropped to 47 percent in 1975; 49 percent in 1976 and down to 43 percent in 1977.

Fresh fruit and vegetable traffic which was moved 31 percent by rail in 1970 was only 11 percent by rail in 1977.

The Committee believes that the significant reason for the decline in railroads' business has been the inflexibility of existing regulation. Prior to the implementation of the 4R Act, every shipper would protest a rate increase as being unreasonable. In the 4R Act, Congress instituted the so-called "market dominance test" in hopes of removing most traffic from rate regulation. Unfortunately, the rules promulgated by the Commission freed up less than 30 percent of the traffic from regulation. The Commission now has underway a proceeding to exclude more traffic from regulation by redefining the rules and regulations for market dominance. In the Committee's judgement this change will be insufficient to effect enough change in railroad pricing to permit the turn around of an overly regulated industry. Consequently, the Committee bill significantly changes railroad regulation so as to create a climate in which railroads can earn enough revenue to meet their capital needs. The changes in the Committee bill are comprehensive, but are carefully tailored to protect shippers from unreasonable rates or abuses of railroad monopoly power.

The Railroad Revitalization and Regulatory Reform Act of 1976 has not provided the flexibility in rates that the industry needs to earn revenues sufficient to maintain and improve the rail system. Initially the Interstate Commerce Commission interpreted the 4R Act very narrowly, providing little rate flexibility. Although the Commission has interpreted the law more broadly of late, the 4R Act does not provide sufficient rate flexibility.

The Committee has attempted to strike the proper balance between protecting shippers who are truly subject to the market power of railroads and providing sufficient rate flexibility to the railroads to allow

them to compete effectively with other modes and earn adequate revenues. The rate provisions of the bill are designed to protect shippers who have no transportation alternative, and who are being charged rates that are too high.

The test of a transportation alternative is a sound one. If a shipper can rely on a transportation alternative, which could include another railroad, a barge, or a truck, at a transportation cost which is not substantially greater than the rail transportation cost, then competition is present. Competition will serve to hold down rates, and the railroad involved would not have market power.

Similarly, if a consignee of goods shipped by railroad can obtain the same goods or commodity elsewhere at a price which is not substantially greater than the delivered cost of the goods or commodity shipped by rail, the railroad does not possess market power over the movement. If the rail rate rises too high, the delivered cost of the goods or commodity will rise and the consignee will turn to another source, and the movement and the revenues from that movement will be lost to the railroad. In such a situation the railroad is constrained by the price of competing goods from another source.

A transportation alternative does not exist where the alternative is dependent on changes in present conditions. For example, the possibility that someone might build an Interstate Highway to a remote coal mine could not be considered to mean that an actual or present potential transportation alternative exists. On the other hand, the need to build a loading dock or facility to service another transportation mode could not be considered to eliminate the possibility of a transportation alternative.

The second test, whether a rate exceeds the "cost recovery percentage", determines whether a railroad which has market power is abusing that power. If a shipper has no transportation alternative, but the rate he is charged is very low compared with other rates, the shipper should have no recourse to a regulatory agency.

Only when the rate charged would provide revenues which more than cover costs of operating the rail system should shippers have the right to complain, and have their complaints heard by the Interstate Commerce Commission.

The Committee has designed a test, which is the "cost recovery percentage", to determine if a railroad is abusing any market power it might have. The "cost recovery percentage" is the level at which a rate exceeds the level necessary to cover costs, based on the existing pattern of rates.

Because of the existence of competition, all rates cannot pay an equal percentage of "fixed costs". As in other industries, some rates will contribute more to fixed costs than others. The Committee understands the necessity of such differential pricing, and has designed a regulatory system which allows for such pricing decisions. In the absence of the regulatory flexibility which permits differential pricing, all shippers would be harmed. If traffic which moved at low rates were forced to pay higher rates, the traffic would disappear to other modes. When the traffic moved to another mode, the contribution to fixed cost made by that traffic would also disappear. The result is that the remaining commodities would have to make up for the fixed cost

formerly paid by the traffic which moved to another mode, resulting in higher rates for the remaining traffic.

The Committee believes that the test in the bill is a sound one, and one that provides shippers with adequate protections.

Because the bill would allow contracts and other rate-making opportunities, the Committee has eliminated capital incentive rates. They were designed in the 4R Act to allow certainty in making investments in rail equipment and plant by establishing rates which would remain in existence for five years. With the certainty provided by contracts, such rates are no longer necessary.

Presently existing capital incentive rates, of which there are only a few, will remain in existence until the expiration of the five year period. Since investments have been made in reliance on the rates it would be unfair now to open those rates to challenge.

Along with the changes in rate-making contained in the bill it has been necessary to remove some of the prohibitions in present law on discrimination. The Committee believes that different costs and different services may justify different rates. Practices that would have been discriminatory under existing law are allowed and encouraged under this bill. Such flexibility is essential if rail carriers are to have the ability to compete effectively within the industry and with other modes. Existing discrimination provisions have attempted to keep shippers and regions equal, but have resulted in deteriorating rail service and rates unrelated to the competitive circumstances of different markets.

Although the bill allows significant rate flexibility to rail carriers, the Committee is concerned that the impact of any rate increases be minimized. To that end the bill limits any rate increases on traffic that presently travels at rates above the average to no more than 10 percent per year in addition to inflation for three years. The impact on shippers who would otherwise pay higher rates is thus minimized.

The bill eliminates general rate increases on all traffic after January 1, 1983. The Committee believes that the industry should rely to the maximum extent possible on individual rate increases rather than rate increases of broad general applicability. Pricing decisions which are related to the individual movements involved are critical to the competitive success of the industry.

At the same time the Committee recognizes that the railroad industry must deal with literally millions of rates often in times of high inflation. To cover costs the industry may have to rely, to some extent, on rate increases of general applicability. After the abolition of general rate increases the bill allows the Commission, in its discretion, to provide for increases of general applicability, but no higher than necessary to recover inflation-based cost increases.

Under existing law carriers have been reluctant to enter demand sensitive rates for fear of violating the discrimination provisions of subchapter IV of title 49. The Committee specifically provides for demand sensitive rates in this legislation.

Demand sensitive rates are desirable because they distribute the flow of traffic from peak periods to periods of lighter density. They are consistent with the interest of this legislation to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.

The demand sensitive rates have been further augmented by giving shippers an opportunity to plan their costs. This is done by providing that carriers must enter into agreed upon charges within the range of rates set in the tariff up to 12 months in advance. Thus, a futures market for rail transportation services will be created which will benefit shippers and railroads alike.

Today 70 percent of the property transported by rail moves over through routes subject to joint rates and the revenue derived from these movements is divided among the participating carriers according to divisions generally prescribed by the Commission. The existing joint rates and divisions do not allow some rail carriers to recover even the variable costs of providing transportation services on certain through routes. Conrail, in particular, is required to rely on federal subsidies amounting to hundreds of millions of dollars because it is unable to price its portion of joint services in a manner reflecting market forces. Under existing law, unless all carriers participating in the joint rate concur, these rates and divisions can be changed only by protracted proceedings before the Commission.

A rapid change in the present law might, on the other hand, disrupt the national rail system. Consistent with the goals of preserving a financially stable, private sector rail system set forth in section 3 of the bill, section 301 establishes a moderate procedure by which rail carriers that do not earn adequate revenues under existing joint rates and divisions can surcharge such rates or cancel their application to particular routes without the concurrence of other carriers. The purpose of this section is to insure that no rail carrier will be compelled to carry goods unless its share of the revenues from the joint rate, including any surcharges, is at least 110 percent of the carrier's variable costs of providing the particular services involved. In addition, for lines owned by a carrier with an annual traffic density of less than three million gross ton miles per mile, per year, this section is intended to allow such a carrier to recover its reasonably expected costs of providing services over such lines.

This section is designed to reduce to a minimum delays that might result in a carrier being forced to carry traffic below 110 percent of the variable costs of any movement or 100 percent of the reasonably expected costs of continuing service on a line with less than three million gross ton miles per mile of traffic per year. The Committee expects that the Commission will not permit needless litigation to hamper the goal of eliminating all burdens on commerce imposed by the operation of services below this cost level.

This section allows connecting carriers who participate in a particular route to which a surcharge has been applied or to which the application of the joint rate has been cancelled to respond by demonstrating that the joint rate without a surcharge is sufficient to provide revenues to the surcharging or cancelling carrier in excess of 110 percent of variable costs. Alternatively, the connecting carrier can agree to a new division or new lawful rate which would be sufficient to produce revenues in excess of 110 percent of variable costs to the carrier proposing the surcharge or cancellation.

A shipper would also have the ability to cancel a surcharge for a particular route if there were no route remaining for the particular

movement of goods subject to the surcharge which was not subject to the surcharge.

Although the surcharges itself would be subject to rate regulation only if the surcharge and the surcharging carrier's share of the revenues exceeded a maximum reasonable level under the rate provisions of the bill, any subsequent rate increase would be subject to rate regulation, with the surcharge considered as part of the rate. Similarly a new higher lawful rate offered by a connecting carrier to bring a carrier up to 110 percent of variable cost would be subject to regulation under the bill.

In the case of surcharges designed to cover the reasonably expected cost of operating lines carrying less than three million gross ton miles per mile annually, a carrier or shipper's remedy is to protest the rate on the grounds that the surcharge exceeds 110 percent of the variable costs of carrying the traffic to the line and 100 percent of the reasonably expected costs of continuing service over the line.

Because the Committee has chosen to use average cost figures in most cases to reduce litigation and because the Committee wishes to ensure that where traffic is not involuntarily moved below a carrier's actual variable costs, the bill uses 110 percent of unadjusted Rail Form A costs to ensure that the use of cost averages does not force the operation of money losing services. It is unlikely that a rate at 110 percent of variable costs could ever be unreasonable.

The Committee believes that this section provides necessary relief to rail carriers presently required to carry freight under inadequate joint rates or divisions with a minimum intrusion upon the joint rate structure as a whole. The section is not intended to preclude any other steps a carrier might take under existing law with regard to joint rates or through routes.

The Committee believes that if railroads are given freedom to set rates in a competitive marketplace, they should not be allowed to continue collective ratemaking. Discussion of single line rates is eliminated immediately and discussion of joint line rates, except by carriers who participate in a single route, is eliminated by January 1, 1981. Only if the Commission finds that it is unable to use its broad authority under the provisions of the Act to promulgate rules which will allow carriers to establish rates without collective ratemaking procedures presently in place, may the Commission, after a hearing on the record, find that it cannot promulgate such rules.

The reported bill makes 49 U.S.C. 11142, which prescribed a uniform cost and revenue accounting and reporting system, applicable to non-rail carriers. The Committee recognizes that, while the intent of the 4R Act to encourage modern cost accounting and financial analysis remains valid today, Section 11142, as implemented by the ICC, has not yielded meaningful and detailed cost information, as intended by Congress. Rather, the variable cost determinants developed by the Commission are based on historic data and nationwide averages and do not reflect the differences among regions, rail carriers or particular movements.

The Committee believes it is critically important that a cost accounting structure that insures the consistency and integrity of railroad cost information be established. The Committee believes there is a serious shortage of accurate cost information available for spe

cific movements of commodities by rail. The reported bill establishes a Railroad Accounting Standards Board which is to promulgate regulatory cost determination principles that shall be applicable to the entire railroad industry. The principles shall ensure that, to the maximum extent possible, railroads identify economically accurate costs. The principles shall identify the variable costs the Board deems to be associated with particular movements of goods or other costs that the Board believes most accurately represent the economic cost of particular movements.

Although each railroad is required to have their accounting system certified by the ICC to be in compliance with these standards, it is the Committee's intention that each railroad would have discretion within the standards to utilize its own accounting system.

It is the Committee's intention that the Railroad Accounting Standards Board is to be independent of the Executive Branch and not a functional part of the ICC or the General Accounting Office (GAO). It is the Committee's belief that the success of the Board is contingent upon its efforts to draw not only upon existing expertise residing in the Commission, but also upon persons in the private and public sectors that are expert in their knowledge of the railroad industry, cost accounting, regulatory accounting, and the purposes of the Act.

Since the enactment of the 4R Act, the ICC has expended considerable time, effort and funds towards the development of a uniform accounting system for railroads. To the extent the Board feels it is advisable, it may draw upon the expertise of the ICC.

It is the intention of the Committee that the Board's functions are to be solely related to regulatory proceedings and not to general purpose financial reporting, as followed by carriers in preparing their financial statements or other financial data included in reports to shareholders.

Most importantly, the Committee intends that the Board shall as objectively as possible determine which variable and other direct and indirect costs of movements are needed to meet the cost based tests of this Act.

The Committee has observed the deteriorating conditions of America's branch lines. An enormous amount of time, effort, and expense has been expended contesting abandonments. Few challenges have been successful. More often than not contested abandonments which have been denied serve only to slow the rate of decline of the rail line.

The Committee has carefully formulated a program which will directly benefit shippers and receivers of commodities moving on branch lines. Under this program a carrier desiring to abandon a rail line must attempt to find a purchaser of the line prior to filing for an abandonment. The abandoning carrier is required to sell the rail properties for net liquidation value, but in any event, at not less than a constitutional minimum amount. The Committee has mandated that not less than $73,750,000 of the $1,475 million recommended authorization shall be available for the purchase or rehabilitation of feeder lines.

This program has the advantage of avoiding expensive protracted litigation. It provides the carrier desiring to abandon a line a vehicle for prompt abandonment. It creates a method for transferring the rail properties prior to their downgrading. The financial assistance will go

directly to those who have the greatest incentive for maintaining the quality of the line and the service—the shippers on the line and the State assisting those shippers.

The need for an alternate abandonment program is illustrated by a case before the Commission, *Bloomer Shippers Association* v. *Illinois Central Gulf*. In *Bloomer*, a convincing case was made that the line was economically viable while it was capable of carrying jumbo hopper cars. The line was not maintained and was consequently downgraded to the point that it could no longer carry jumbo hopper cars. Since jumbo hopper cars were essential to the profitable hauling of agricultural commodities on this line and the line was used primarily for the hauling of agricultural commodities, it ceased to be profitable when it could no longer carry jumbo hopper cars and the railroad filed for abandonment.

A line such as the Bloomer line is an excellent candidate for assistance under this program because the line is potentially capable of sustaining itself once it is rehabilitated, and it is essential to the shippers in the area.

The Committee is aware of the need, on a larger scale, for restructuring assistance to aid in the development of a more efficient rail system. The Committee notes the recent bankruptcies of the Milwaukee Road and the Rock Island, and the service disruptions that have been caused by the forced restructuring of those systems. These forced restructurings have also been costly to the taxpayers. For example, directed service over the Rock Island has cost the Federal Government at least $70 million. The Committee believes rational, planned restructuring is far preferable to crisis restructuring.

The restructing program seeks to facilitate railroad restructuring through a five year program authorizing $1.475 billion in financial assistance. Restructuring would involve a consolidation and reduction of duplicate tracks and facilities, discontinuance of uneconomic service, rationalization of routes and terminal facilities, and improvement in operating efficiencies. The elimination of excess capacity would enable railroads to reduce their maintenance and property tax expenditures and increase their liquidity by the sale of nonproductive property and facilities. By discontinuing uneconomic service and rationalizing routes and terminal facilities, railroads would manage their remaining assets more efficiently, thereby improving cash flow.

This restructuring program is intended to promote restructuring by requiring applicant railroads to undertake significant restructuring as a condition to Federal assistance. The proposed low cost Federal assistance should overcome the railroads' reluctance to restructure their systems. This is but another tool available to the Secretary to fashion appropriate assistance to the needs of particular carriers, and thus assist in rebuilding the railroad system.

Title V of the Regional Rail Reorganization Act of 1973, as amended, authorized a $250 million fund to protect employees whose compensation, fringe benefits, working conditions or rights and privileges were adversely affected by the reorganization of bankrupt railroads into the Consolidated Rail Corporation (Conrail).

The fund to reimburse Conrail and seven other railroads for benefits paid to about 36,500 protected employees has been depleted. The depletion of the fund is primarily due to the selection of an income

guarantee equal to an employee's 1974 compensation, when many employees worked more than normal amounts of overtime, and because fewer Conrail employees have separated than had been projected.

Conrail has a continuing legal responsibility to make labor protection payments under Title V of the 3-R Act. Based on discussions with the management of Conrail and representatives of the affected protected employees and a 1979 General Accounting Office study advocating substantial changes in the program, the Department of Transportation recommended that legislation providing additional federal funding be contingent upon a more reasonable level of protection for employees and a monitoring procedure. Accordingly, the Administration recommended legislation to authorize $235 million to fully fund a modified employee protection program. It is the Committee's understanding that the management of Conrail and the Administration consider the $235 million authorization to be adequate, and have made a commitment, which is reflected in the bill, that the Corporation and other affected railroads will bear Title V protection costs for its employees in excess of the $235 million.

The United States Railway Association is directed to undertake auditing and reporting responsibilities for the payment of benefits under Title V and the evaluation of the effectiveness for the provisions of Title V in providing a reasonable level of protection to protected employees and enabling Conrail to improve the management of its workforce.

The Supplemental Transactions provision in the 3-R Act is a difficult and cumbersome one. Where Supplemental Transactions are necessary to maintain or improve rail service to a part of the region, a process should be available which is a fair and expeditious one.

In some cases, Supplemental Transactions will improve the financial performance of the Corporation. The Committee is aware that the Corporation believes that in some areas it would be able to reduce its operating losses if it did not have to continue service to the area. If proposed transferees are available, and the standards for a transfer under the Act are met, transfers in such areas should be encouraged.

The Committee believes that the Secretary should use his powers under this section to preserve and enhance rail service wherever possible in the region.

Oversight Findings

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has made oversight findings and recommendations set forth in this report.

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

Cost Estimate

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made regarding the cost of this legislation:

$1,475 billion is authorized under Title V for fiscal years 1980 through 1984, to remain available until expended, to the Secre-

tary for the purpose of providing financial assistance for railroad restructuring and feeder line development programs. The bill extends the existing railroad rehabilitation program for two years, which allows $110 million in currently authorized but unappropriated funds to become available for appropriation.

$235 million is authorized under Title VI for Conrail labor protection payments by the Railroad Retirement Board under the Regional Rail Reorganization Act of 1973, as amended.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 16, 1980.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 7235, the Rail Act of 1980.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Robert D. Reischauer
(For Alice M. Rivlin, Director).

Congressional Budget Office—Cost Estimate

1. Bill number: H.R. 7235.
2. Bill title: The Rail Act of 1980.
3. Bill status: As ordered reported by the House Committee on Interstate and Foreign Commerce, May 15, 1980.
4. Bill purpose: Titles I–IV of the bill amend several aspects of the laws regulating freight railroad transportation. They reduce substantially the Interstate Commerce Commission's (ICC) authority to regulate maximum rates for rail freight traffic; however, section 11 prescribes a 10 percent limit on rate increases above inflation adjustments during a transition period ending December 1, 1982. The ratemaking freedom that the bill allows is also subject to challenge by shippers protesting rate increases. Upon challenge from shippers, rail carriers proposing rate increases must demonstrate either that alternative transportation is or could be made available for the commodity in question or that the proposed rate does not exceed a revenue-variable cost standard specified in the bill.

The bill allows the establishment of contracts between rail carriers and shippers for services under set rates and conditions; limits the activities of railroad rate bureaus, and allows the ICC to increase the rates charged for the use of any type of freight car in an attempt to attract investment to alleviate perceived equipment shortages. Among its remaining regulatory provisions, the bill allows the ICC to review and prohibit certain financial transactions by railroads that maintain facilities or operations in an unhealthy or unsafe manner, as determined by the Department of Transportation (DOT). It also requires the ICC to investigate the transfer of funds from railroad subsidiaries to parent companies, especially in cases where this practice impairs a rail carrier's ability to maintain safe operations.

To guide ICC actions, the bill creates a Railroad Accounting Standards Board to establish railroad cost accounting standards. The Board is to be chaired by the Comptroller General and is to complete its work by October 1, 1983.

Title V creates a new financial assistance program for railroads, authorizing $1.475 billion for loans and equity investment, and it extends the current railroad rehabilitation assistance program for two years, making available for appropriation $110 million in unused authorizations and extending the availability of any appropriations that remain unobligated at the end of the current fiscal year. Approximately $200 million in appropriations are now unobligated.

Title VI modifies the monthly allowances paid to displaced Conrail employees and increases the amount of funds authorized to be appropriated under Title V of the Regional Rail Reorganization Act of 1973 by $235 million.

5. Cost estimate: The following table summarizes the total spending authorized or resulting directly from provisions of this bill.

[In millions of dollars]

	Millions
Estimated budget authority/authorization level:	
Fiscal year:	
1980	$77
1981	1,620
1982	17
1983	14
1984	7
1985	7
Estimated outlays:	
Fiscal year:	
1980	77
1981	80
1982	185
1983	327
1984	357
1985	310

Financial assistance for railroads

The largest component of the above costs is the $1.475 billion authorized for a new financial assistance program for railroads. In addition, the bill extends the railroad rehabilitation assistance program two years, making $110 million in currently authorized but unappropriated funds available for appropriation. The projected budget impact of these authorizations is shown in the following table.

	Millions
Authorization level:	
Fiscal year:	
1980	------
1981	$1,585
1982	------
1983	------
1984	------
1985	------
Estimated outlays:	
Fiscal year:	
1980	---
1981	64
1982	168
1983	333
1984	350
1985	303

These costs will fall in budget function 400.

The bill also creates a Railroad Accounting Standards Board, to serve through fiscal year 1983, but it does not authorize funds for the Board's activities. CBO estimates that the Board will require approximately one million dollars for each of its three years for staff, consultants, and payment for members' time and expenses. Costs could be somewhat lower if the Board chooses to utilize the cost accounting work that the ICC has been, and is currently, conducting.

Conrail employee protection expenses

The changes made by Title VI will result in additional future federal liabilities through an extension of an existing entitlement and will require subsequent appropriation action to provide the necessary funding. The figures shown as "Estimated Budget Authority" represent an estimate of the funds necessary to cover the outlays that will result from enactment of this bill.

	Millions
Estimated budget authority:	
Fiscal year:	
1980	$77
1981	35
1982	17
1983	14
1984	7
1985	7
Estimated outlays:	
Fiscal year:	
1980	77
1981	35
1982	17
1983	14
1984	7
1985	7

These costs will fall in budget function 600.

6. Basis of estimate: Most of this bill's provisions become effective on October 1, 1980. The Conrail labor protection provisions in Title VI become effective upon enactment, which is assumed for the purpose of this estimate to be August 1, 1980.

CBO assumes that all of the $1.475 billion new authorization for financial assistance to railroads will be appropriated and obligated over a period of five years, consistent with the President's funding request for this program, and that the $110 million rail rehabilitation authorization will be appropriated and obligated in fiscal years 1981 and 1982. Outlays from the full $1.585 billion authorization are estimated on the basis of the rail rehabilitation program's historical spending pattern.

The bill also makes available for obligation any funds appropriated to the rail rehabilitation program that remain unobligated at the end of fiscal year 1980. Existing law prohibits the expenditure of the funds appropriated to this program that remain unobligated at the end of fiscal year 1980. At this time, $202.7 million in rail rehabilitation appropriations remain unobligated; however, DOT expects to obligate all these funds in the current fiscal year and CBO assumes that this will occur.

Additional, though inestimable, federal costs could come from the analytical and administrative activities that the bill requires of the ICC and DOT. The bill's rulemaking and other regulatory provi-

sions authorize no new federal spending, though they may be expected to help improve the financial situation of U.S. railroads and, thus, reduce the requests by these railroads for federal assistance over the long term.

The $250 million originally authorized for Conrail labor protection payments was exhausted in late January 1980. Since that time, Conrail has been paying approximately $5.5 million per month in monthly displacement allowances (MDA) that would be reimbursed under this bill. Assuming an August 1, 1980, effective date will require $33 million in reimbursement payments. In addition, it is estimated that MDAs will average $2.0 million per month in August - September. The total estimated MDA payments in 1980 are therefore $47.0 million. These payments are expected to decline to $17.8 million in fiscal year 1981.

In addition to the MDA payments, certain training and separation payments would result from the enactment of this bill. These payments are estimated by the Administration to total $57.2 million. The timing of these payments is very uncertain. In their January budget submission, the Administration assumed an enactment date earlier than the one now expected for this bill, and they estimated that the full $57.2 million would be spent in fiscal year 1980. Assuming an August 1, 1980 effective date, CBO estimates that $10 million of the separation and training costs would fall in fiscal year 1980 and $17.2 million would fall in fiscal year 1981.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 12, 1980, CBO prepared a cost estimate for S. 2530, the Employee Protection and Railroad Financing Modification Act of 1980, which authorizes appropriations for Conrail labor protection expenses and railroad financial assistance. CBO prepared a cost estimate on December 5, 1979, for S. 1946, the Railroad Transportation Policy Act of 1979, which amends freight railroad regulation laws.

9. Estimate prepared by: Chuck Seagrave and Allen Kraus.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The Committee believes that the enactment of this legislation, through the encouragement of more competitive, flexible, and efficient rail operations, and the elimination of unnecessary economic regulation, will have a significant anti-inflationary impact on prices and costs in the operation of the national economy.

The Committee notes that there are a number of provisions which will have specific anti-inflationary effects.

In particular, the Committee believes the increased pricing flexibility will make it easier for railroads to cover their costs and achieve an adequate revenue level. This, in turn, will minimize the future need

for large Federal subsidies to railroads. Currently, Federal loan assistance to freight railroads is considerable. The end result of this greater price freedom, the Committee believes, will be anti-inflationary.

In contrast, the Committee believes adoption of proposed amendments that would have limited pricing flexibility—amendments the Committee rejected—could have had net inflationary effects. The Congressional Budget Office came to a similar conclusion with regard to the effect of a proposed amendment to S. 1946, the Railroad Transportation Policy Act of 1979, passed by the Senate.

The Committee believes that the bill, by increasing the flexibility of rail carriers to cover their costs on joint routes, will be anti-inflationary. The Committee is aware of the particular problem of Conrail in this regard. The Federal Government has already spent $3.3 billion on Conrail. By making it easier for Conrail to cover its costs, this bill will reduce the need for future Federal subsidies for this rail carrier, reducing Federal outlays, with a substantial anti-inflationary effect.

The Committee believes there are other provisions which will have strong anti-inflationary effects through the encouragement of greater intramodal competition. Competition, by serving as an incentive to increased efficiency and lower costs, is anti-inflationary. The Committee expects that the increased price competition that will result from enactment of this legislation will have strong anti-inflationary effects and result in a large savings to shippers and consumers.

COMMITTEE CONSIDERATION

The Subcommitte on Transportation and Commerce held hearings on April 24, May 31, July 2, August 7, September 27, October 16, October 23, October 25, October 30, and November 1, 1979. Hearings were also held by the Subcommittee on March 31, 1980 and April 2, 1980. Topics of the hearings included rail deregulation and its relationship to the movement of agricultural commodities, Interstate Commerce Commission regulatory reform initiatives and shipper reactions to such initiatives, joint rates and through routes, rate bureaus, shipper concerns, car service, and mergers.

The Subcommittee heard testimony from the following witnesses: On April 24, 1979, the Subcommittee heard testimony from The Honorable Brock Adams, Secretary, U.S. Department of Transportation; The Honorable A. Daniel O'Neal, Chairman, Interstate Commerce Commission; and William H. Dempsey, President and Chief Executive Officer of the Association of American Railroads.

On July 2, 1979, the Subcommittee heard testimony from Peter Goldmark, Executive Director of the Port Authority of New York and New Jersey; John Mladinov, Assistant Commissioner for Planning and Divisions, New York State Department of Transportation; Louis Rossi, New York State Railroad Administrator of the New York State Department of Transportation; Anthony D. Glieldman, Commissioner of Ports and Terminals for the City of New York; Michael Hurbert, Executive Director of the Institute for Longshore and Maritime Studies, Mr. George Pezold, General Counsel, Freight Users Association-Long Island Division; George Mulford, Vice President of Marketing, Revere Sugar Company; O. Carey, Presi-

dent and Chairman, New York Dock Railroad; Vincent Staunton, Vice President, Sea Land Service, Inc.; Carmine Ragucci, President, Holland Hook Marine Terminals; Edward G. Jordan, President and Chief Executive Officer, Consolidated Rail Corporation; James A. Hagen, Senior Vice President of Marketing and Sales, Consolidated Rail Corporation; Richard Steiner, Vice President of Marketing and Sales, Consolidated Rail Corporation; and John L. Sweeney, Senior Vice President, Consolidated Rail Corporation.

On August 7, 1979, the Subcommittee heard testimony from The Honorable John Rita, Mayor of Blue Island, Illinois; The Honorable Harold Gouwens, Village President of South Holland, Illinois; Robert D. Fritz, Regional Legislative Director of the Brotherhood of Railway and Airline Clerks; Donald Lindsey, Chairman of the State Legislative Board, Brotherhood of Locomotive Engineers; John McGinness, State Legislative Director, United Transportation Union; David Henderson, Executive Director, Eastern Country Elevator Transportation Association; G. F. Mohan, Director of Pricing, Illinois Central Gulf Railroad Company; John E. Harvey, Director of Corporate Transportation, Archer Daniels Midland Company; John D. Mitros, Executive Vice President, Chicago, Rock Island and Pacific Railroad Company; Robert L. Lightball, Manager of Commerce and Research, A. E. Staley Company; and Donald Burquist.

On September 27, 1979, the Subcommittee heard testimony from The Honorable A. Daniel O'Neal, Chairman, Interstate Commerce Commission; James V. Springrose, Vice President of Transportation, Cargill, Incorporated; John Norton, Director of Transportation and Distribution, DuPont Company; E. Morgan Massey, President, A. T. Massey Coal Company, Incorporated; Laurence J. Stern, Manager of Transportation, Sunkist Growers, Inc.; and Michael Levine, Vice President of Transportation, Western Grower's Association.

On October 16, 1979, the Subcommittee heard testimony from Alexander L. Morton, Director of the Office of Policy and Analysis, Interstate Commerce Commission; Joseph Ostrow, Vice President of Market Development, Western Pacific Railroad Company; James L. Tapley, Vice President of Law, SouthErn Railway Company; and Edward G. Jordan, Chairman and Chief Executive Officer, Consolidated Rail Corporation.

On October 23, 1979, the Subcommittee heard testimony from Donald L. Flexner, Deputy Assistant Attorney General, Department of Justice; Otis W. Cobb, Senior Assistant Vice President of Pricing, Burlington Northern, Inc.; Joseph D. Feeney, General Counsel, Western Railroad Association; David Wilson, Assistant Director of the Bureau of Competition, Federal Trade Commission; James Fourmaris, Traffic Manager, Sweetheart Plastics; and Conrad Romanick, Manager of Traffic Economics and Government Relations, Dow Chemical, U.S.A.

On October 25, 1979, the Subcommittee heard testimony from John Oberdorfer, Patton, Boggs and Blow; John H. Norton, Director of Transportation and Distribution, E. I. Dupont de Nemours & Company; Roland A. Ouellette, Director of Transportation Affairs, General Motors Company; Leo Cisneros, Director of Physical Distribution, Firestone Tire and Rubber Company; R. Kupman, Executive Vice President, H. K. Webster Co., Inc.; Ellis T. Cox, Executive Vice

President, Potomac Electric Power Company; Marvin Miller, President, Clayton Container Corporation; and Edwin Wheeler, President, The Fertilizer Institute.

On October 30, 1979, the Subcommittee heard testimony from Alexander L. Morton, Director of the Office of Policy and Analysis, Interstate Commerce Commission; James Compton, Vice President, North American Car Company; John Rees, Chairman of the Board, National Rail Utilization Corporation; Richard Briggs, Executive Vice President, American Association of Railroads; and Carl N. Taylor, President—Rail Division, ITEL Corporation.

On November 6, 1979, the Subcommittee heard testimony from The Honorable A. Daniel O'Neal, Chairman, Interstate Commerce Commission; Donald L. Flexner, Deputy Assistant Attorney General, Department of Justice; John P. Fishwick, President and Chief Executive Officer, The Norfolk and Western Railway Company; and Robert A. Gallamore, Deputy Administrator, Federal Railroad Administration.

On March 31, 1980, the Subcommittee heard testimony from The Honorable William B. Johnston, Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation; William H. Dempsey, President, Association of American Railroads; Thomas McFarland, Counsel for Illinois Feed and Grain; Reesler Miller, National Grain and Feed Association; Charles Smith, State Railroad Administrator, Maryland Department of Transportation; William Druhan, Secretary, National Conference of State Railway Officials; Donald Boyes, President, National Industrial Traffic League; Edward L. Merrigan, Counsel for National Association of Recycling Industries, Inc.; and J. R. Snyder, Chairman of the Legislative Committee, Railway Labor Executives Association.

On April 2, 1980, the Subcommittee heard testimony from The Honorable Bob Eckhardt, U.S. House of Representatives; The Honorable Darius W. Gaskins, Jr., Chairman, Interstate Commerce Commission; Brock Adams, Counsel for TRAIN; John P. Fishwick, President and Chief Executive Officer, Norfolk and Western Railway Company; Thomas H. Boggs, Jr., Counsel for the Committee of Railroad Shippers, Patton, Boggs, and Blow; James J. Baylor of A. T. Massey Coal Co., Inc., on behalf of the National Coal Association; Craig McNeese of Houston Light and Power Company on behalf of Western Coal Traffic League; Ellis Cox of Potomac Electric and Power Company on behalf of Edison Electric Institute; Conrad Romanick, Manager of Traffic Economics and Government Relations, Dow Chemical, U.S.A.; Howard Croft, President, American Short Line Railroad Association; and Paul Rodgers, Administrative Director and General Counsel, National Association of Regulatory Utility Commissioners.

The Subcommittee met in open Markup Session on April 24, 1980, and April 29, 1980, considered a Staff Working Draft No. 3, and, with a quorum present, by voice vote ordered a clean bill reported to the full Committee on Interstate and Foreign Commerce. H.R. 7235 was introduced by Mr. Florio, Mr. Madigan, Ms. Mikulski, Mr. Santini, Mr. Matsui, Mr. Lee and Mr. Broyhill.

The full Committee met in open markup session on May 15, 1980, and by a Roll Call Vote of 35-6 ordered H.R. 7235, with an amendment

striking all after the enacting clause and inserting a new text incorporating the amendments adopted by the Committee, reported to the Full House.

SECTION-BY-SECTION ANALYSIS OF H.R. 7235

SECTION 1—SHORT TITLE

Section 1 states that this bill may be cited as the "Rail Act of 1980".

SECTION 2—FINDINGS

The Committee finds that the enactment of the Interstate Commerce Act was essential to prevent an abuse of monopoly power by railroads and to maintain a national railroad network as an essential part of the national transportation system. Today, most transportation is competitive and many of the Government regulations affecting railroads have become unnecessary and inefficient. Railroad industry earnings are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvements. By 1985, the railroad industry will experience a capital shortfall of between $16 million and $20 million. The industry's failure to achieve increased earnings will result in either further deterioration of the rail system or the need for additional Federal subsidy. Modernization of economic regulation of railroads, with greater reliance on the marketplace, is essential to achieve maximum utilization of railroads, to save energy and to combat inflation.

SECTION 3—GOALS

The goals of this Act are to assist the industry in the rehabilitation of the rail system in order to remain viable in the private sector of the economy; to reform Federal regulation to preserve a safe, adequate, economical, efficient, and financially stable rail system; to provide a regulatory process that balances the needs of carriers, shippers, and the public.

TITLE I—RAIL TRANSPORTATION POLICY

Section 101. Rail Transportation Policy

Section 101 adds a new section 10101(a) to the Interstate Commerce Act. The new section specifies that the rail transportation policy should guide the Commission in its duties in regulation of the railroads.

The Committee has articulated a rail transportation policy because the existing national transportation policy provision of the act relates to all modes of transportation and has had the effect of encouraging regulation which was prejudicial to the development of a strong and efficient railroad system. The existing national transportation policy—an outgrowth of the 1940 Transportation Act—was enacted at a time when railroads were the dominant transportation mode in the United States. At that time, the transportation policy was set forth in a way which placed both water carriers and motor carriers in a protective regulatory position. For many years, policies such as umbrella ratemaking and arbitrary rail rate equalizations were used to disadvantage railroads.

The railroad industry's declining share of the intercity freight market and low rate of return on investment necessitate a policy for rebuilding a financially strong railroad system. This new section directs the Commission to encourage primary reliance on the marketplace rather than regulation, to limit regulation of railroads to those areas where there is an absence of effective competition and to permit rates which provide revenues necessary to maintain the rail system and to attract capital.

The affirmative rail transportation policy under the section 10101 (a) is intended to ensure the development of a sound rail transportation system by moving the industry toward more aggressive competition, pricing innovation, and adequate revenues. The new rail transportation policy provides safeguards against predatory pricing and practices which constitute unfair competition. The Commission should, however, encourage competition by and within the railroad industry. It should also encourage coordination between rail carriers and other modes in order to provide the shipping public with efficient and reliable transportation service.

TITLE II—RAILROAD RATES, PROFITS, AND REINVESTMENT

Section 201. Regulation of Railroad Rates in the Absence of Effective Competition

Section 201 provides that a rail carrier may establish any rate for transportation or other service unless the Commission determines under section 202 of the bill that there is no effective competition with respect to a particular transportation service provided by a rail carrier, in which case the rate must be reasonable. In a proceeding to determine the reasonableness of a rate, the burden is on the shipper to prove such rate is not reasonable unless the rail carrier does not have a cost accounting system finally certified by the Commission under Title IV of the bill or the rail carrier has adequate revenues as determined by the Commission under section 10701(a)(2). In determining whether a rate is reasonable, the Commission shall recognize the policy that efficient carriers shall earn adequate revenues.

This provision sets forth for the first time a standard for the Commission to use in determining if a rate is reasonable, and that standard goes to assuring that railroads can continue to operate as private enterprises. The bill requires the Commission to recognize the policy that efficient rail carriers shall earn adequate revenues. Previous admonitions by the Congress that the Commission assist carriers in earning adequate revenue levels (49 USC 10701) have not achieved their goals. As a result, the Committee is establishing a more straight forward mandate. This is a clear directive to ensure financially sound railroads, and the Commission is not to misuse the term "reasonable" to circumvent this directive. The Committee recognizes the prevalence of competition in rail markets and therefore this reasonableness standard will be used only in those instances where there is no effective competition and where the Commission retains jurisdiction over maximum rates.

Sec. 202. Determination of the Absence of Effective Competition

This section establishes the conditions under which the Commission may find that there is effective competition with respect to transportation to which a rate applies.

It first defines several terms, which are "fixed and variable cost", "cost recovery percentage" and "revenue-variable cost percentage".

When a rate is challenged as not reasonable, the Commission has 90 days to determine whether there is effective competition.

When a shipper challenges the lawfulness of a rate the railroad shall have the burden of proving that there is effective competition. To satisfy the burden of proof the railroad must show that there is an actual or present potential transportation alternative or that the rate results in a revenue to variable cost percentage for such transportation which is equal to or less than the cost recovery percentage. If the railroad makes either of these showings, the Commission has no jurisdiction to determine the lawfulness of a rate.

Transportation alternatives are presumed to exist if comparable traffic has been shipped recently in similar quantities by the shipper or a similarly situated shipper by another mode of transportation at a transportation cost which is not substantially greater than the cost of the transportation by rail. An alternative is presumed to exist also if the consignee can obtain sufficient quantities of the commodity from another source at a delivered cost which is not substantially greater than the delivered cost by rail.

The Committee wants to stress two things. First, with regard to the consignee obtaining the commodity from another source, greater emphasis must be placed on geographic (i.e., product) competition as an important control on pricing behavior than under existing law. The Commission has in some cases looked at geographic competition in its decisionmaking, and this bill would require them to do so routinely. Second, in assessing whether a transportation alternative is substantially more costly, it is important to take service into account. In stressing this, the Committee directs the Commission, in those instances where a motor carrier rate is significantly higher than the rail rate for a given shipment, to determine whether the service provided by the motor carrier is also of a substantially higher level. If so, the the Commission should weigh carefully the improved service against the higher cost to determine if the cost of the alternative is, in fact, substantially greater, or if the disparate costs approximately reflect the different services being offered.

An actual or present potential transportation alternative would not exist where the alternative depended on a theoretical alternative which could not possibly be made available at the time the rate was challenged. The Committee does not expect the Commission to look at the possibility of constructing other modes of transportation or substantial investments in facilities for other modes of transportation, such as the construction of an interstate highway, to find that a transportation alternative exists.

A finding of a transportation alternative must be based on a feasible alternative at the time of the Commission proceeding. However, the absence of a facility which is in the control of the shipper would not preclude the finding of a transportation alternative. For example,

simply because a shipper lacked a short access road for trucks would not prohibit the Commission from finding that a transportation alternative existed.

The finding of a transportation alternative is a factual question, aside from the presumptions contained in the bill. The Committee expects the Commission to look carefully at the factual situation involved to determine if the shipper has a realistic transportation alternative.

Conceptually, the "cost recovery ratio" is a limit on revenue to variable cost ratios below which the Commission does not have jurisdiction over rate changes. If all traffic moved at revenue to variable cost ratios which were less than or equal to this limit, industry revenues would just suffice to cover industry fixed plus variable costs.

The ratio would be calculated as follows:

A representative, valid and reliable sample of carload movements such as the 1 percent waybill sample would be obtained from each railroad. This sample indicates a number of characteristics and the revenue associated with each movement. The variable costs for each movement would be determined by a costing method such as Rail Form A. This permits an estimation of a revenue to variable cost ratio for each movement whose percentage values would then be rank ordered from the highest to the lowest without regard to the commodity or any other movement characteristic associated with the costed sample. This would result in an estimation of fixed plus variable costs for the sample as a whole. The next step would be to determine which revenue to variable cost ratio, if used as an upper limit, would permit revenues to cover estimated fixed and variable costs for the sample in question. The ratio would be the "cost recovery percentage".

The Committee stresses that the cost recovery percentage is not to be used by the Commission as a *de facto* rate ceiling, or even a presumption about rate reasonableness. It is only the point at which the Commission is authorized to consider the question of reasonableness at all if there is no actual or present potential transportation alternative. In looking at the reasonableness of a rate, the Commission will find guidance in other provisions of this bill which focus on the need for adequate rail revenues and for a healthy rail system capable of surviving in the private sector.

Section 203. Investigation and Suspension of Rates

Section 203(a) shortens the period within which the Commission must complete an investigation or suspension proceeding concerning a rate, classification, rule or practice to 4 months from 7 months under existing law. The Commission is permitted an additional 3 months to complete the proceeding if it reports to Congress, as it is under existing law. Rates, classifications, rule or practices which are the subject of investigation or suspension proceeding, or both, which are not concluded by the 7th month could not be thereafter investigated or suspended and would be deemed to be conclusively reasonable.

Subsection (b) adopts a more stringent standard for suspension than under existing law and places the burden on the protestant to prove the standards are met.

The Committee intends that the Commission construe these requirements narrowly, and that suspension would occur in only the most extraordinary cases.

Subsection (e) provides for refunds and an accounting to shippers where a proposed increase rate is suspended (and to rail carriers if the proposed rate increase is suspended and later found to be reasonable) unless the suspended rate was a general rate increase. If a portion of a proposed rate decrease is suspended and the decrease is subsequently found reasonable, the rail carrier may in its discretion refund any portion of the suspended decrease, if the refund is available, to each shipper who participated in the rate in accordance with the relative amount of such traffic transported at such rate.

Section 204. Contracts

Section 204 authorizes rail carriers and the purchasers of rail services to enter into contracts for specific services at specified rates and conditions. Prior to the November 9, 1978, Commission decision authorizing contracts between railroads and shippers, the use of contracts had been held to be unlawful under the Interstate Commerce Act, because of the common carrier obligation to provide transportation to all shippers upon reasonable request at a reasonable rate. The Commission's decision, while establishing a significant alternative for shippers and carriers who desire to plan the allocation and availability of their resources, had a number of restrictions and uncertainties and has resulted in the limited use of contracts.

The Committee bill authorizes contracts subject only to the requirement that the contract not unduly impair the carrier's common carrier obligation and the contract option provisions in subsection (f). The Committee believes contracts serve both shippers' and rail carriers' interests by reducing uncertainty about market and service conditions. It is the Committee's intention that contracts be utilized particularly by those shippers who allege they are essentially captive. Contracts will permit the shipper and carriers to maintain long-term rate stability and assure quality service.

The contract with a summary containing non-confidential information shall be filed with the Commission. The Commission may begin a proceeding to review the contract on its own initiative or upon complaint within 30 days after the date of filing and shall, within 30 days thereafter, determine whether the contract unduly impairs the carrier's common carrier obligation. The Committee believes that the common carrier obligation must be retained to prevent railroads from having the ability to serve only their most profitable business. If railroads were to contract only with shippers of the most profitable traffic, and there were no common carrier obligation, the burden of poor service and perhaps higher rates would fall on the shipper with low volume or low value traffic. The Committee believes that the retention of a common carrier obligation under contract rate making is necessary to protect the smaller shipper with little bargaining power and minimal traffic volumes to offer the railroad. While the Commission has jurisdiction over contracts to ensure no impairment of the common carrier obligation and to enforce the provisions in subsection (b), all other actions to interprete or enforce a particular contract will be in the appropriate court of law.

Subsection (f) affords all shippers within a fifty mile distance of a shipper entering into a contract with a rail carrier an opportunity to enter a similar contract. Such contract is not required to extend beyond the expiration date of the original contract even though eligible shippers may take up to one year to opt into the contract.

A rail carrier, under this subsection, may recover additional costs accruing from difference between the original and subsequent contracts. The additional costs should be only those additional costs directly related to differences between the original and subsequent contracts, although the carrier should be able to retain the same percentage of profits on the various contracts. It is not the intention of the Committee to permit the use of this subsection to become a barrier to the use of contract carriage. It should become an incentive to greater contract utilization in order to increase efficiency for both the carrier and the shipper.

The Committee believes that contracts should be treated as they are elsewhere in the economy. Absent an undue impairment of the common carrier obligation, the Commission is without jurisdiction to reject a contract, and enforcement of a contract must be in the courts. It is not intended that other provisions of the subtitle provide the Commission with the authority to reject a contract. Rail carriers and shippers should be free to negotiate and enter into contracts without concern about whether the Commission will disapprove a contract without concern about whether the Commission will disapprove a contract except for impairing the carrier's ability to fulfill the common carrier obligation. If anti-competitive behavior is alleged, under this section, the antitrust laws are the appropriate and only remedy available.

Section 205. Demand Sensitive Rates

Under Section 205 railroad carriers may file tariffs showing the maximum rates and the minimum rates which will be charged for the service involved. These maximum and minimum rates will set a ceiling and floor for rates to be charged for particular movements. Rates will then fluctuate between that ceiling and floor depending upon the demand for service. The maximum must be reasonable and the minimum must be compensatory.

In addition to providing for maximum and minimum rates, this section requires that carriers using demand sensitive rates shall publish a tariff for such demand sensitive rates at least 180 days prior to their application. Once the rates are in effect the carrier must quote a price within the range of the rates set in the tariff and agree to the charges with the shipper for the specific movement up to twelve months in advance.

Section 206. Phaseout of Capital Incentive Rates

Section 206 phases out capital incentive rates. These rates were authorized under the 4R Act and required a capital investment of at least $1 million by a rail carrier, individually or collectively, with a shipper, or a third party. In return for the rail carrier making this substantial investment, these rates could not be suspended or set aside for 5 years.

However, there are only a few of these rates in existence. There has been substantial litigation concerning them. The Committee does not

believe this provision is needed any longer in light of the pricing and contract freedom provided by this bill.

This section provides that existing capital incentive rates are to remain in effect according to their terms, but for no longer than five years after the date a rate became effective, unless the parties otherwise agree. The five year provision is in keeping with the commitment made by Congress in the 4R Act. The Committee feels fundamental fairness requires adhering to this commitment.

Section 207. Permissive Limited Liability Rates

As a general rule, carriers are held liable under common law and subtitle IV of title 49 for the full actual loss, damage, or injury to property they carry. In 1916, the Interstate Commerce Act was modified by the Cummins Amendment to permit the Commission to authorize released rates in cases where rates based on a declared or released value would be "just and reasonable under the circumstances surrounding the transportation". Under this section, no carrier may publish rates based on the declared or agreed value without specific authority from the Commission. Specific criteria, established in an early released rate case and still generally followed, require a detailed showing before released rates are authorized. Even where there is no opposition, the Commission has been hesitant to authorize released rates.

In many instances, shippers have the resources to obtain insurance at a reasonable price and to bear at least a portion of the risk of lost or damaged cargo. Carriers and shippers should be allowed to agree on a fair rate which explicitly takes into account the risk of loss or damage. This can be accomplished by allowing the filing of released rates in the same manner as other rate changes.

Section 207 amends section 10730 to provide that rail carriers may voluntarily establish rates which limit the liability of the rail carriers to a value established in writing by the shipper or by a written agreemen between the shipper and carrier. Such declaration or agreement may provide for a specified amount to be deducted from any claim against the carriers for loss, or damage or delay. By eliminating the "just and reasonable under the circumstance surrounding the transportation" standard and the necessity for commission approval, the provision will assure greater flexibility for those shippers and carriers who seek rate adjustments because of a willingness to limit liability or to use deductibles.

Section 208. Rate Discrimination

This section amends 49 U.S.C. 10741 to state that rates, rules, or practices which are economically justified by differences in costs or market demand do not constitute a violation of this section. The new subsection (f) is intended to narrow the scope of Section 10741 by exempting surcharges, contract rates, separate rates for distinct services, rail rates applicable to different routes between the same end points and customer solicitation expenses. The Committee considers "end points" to mean specific origins and destinations and broad geographic areas encompassing origins and destinations contained within particular or general tariffs.

Subsections (e) and (f) narrow Section 10741 by permitting discrimination among "different services". The term "different services"

is intended to recognize any differences that would normally be recognized in unregulated service industries as constituting a basis for price differences which would not have an adverse effect on competition. Moreover customer solicitation expenses are exempt from discrimination restrictions in order to encourage railroads to increase rail market penetration.

Section 209. Exemption

Section 209 clarifies and broadens the Commission's existing exemption authority under Section 205 (49 U.S.C. 10505) of the 4R Act. Existing law provides that the Commission may exempt only persons or matter of a limited scope, when it finds, after a proceeding, that the application of a provision in Subtitle IV of Title 49 is not necessary to carry out the national transportation policy, is unreasonably burdensome and serves no useful public purpose. Notwithstanding these limitations, after considerable initial delay, the Commission exempted the carriage of fresh fruits and vegetables from all provisions of Subtitle IV, exempted several small mergers, and is proposing to exempt trailer-on-flat car traffic, from several provisions of Subtitle IV. The Committee has followed the Commission's exemptions closely and believes the Commission has proceeded on a sound basis given the existing statutory restrictions, easing unnecessary regulatory restraints and providing an improved competitive transportation environment.

Section 209 provides that the Commission may, in its discretion, initiate a proceeding and provides that a person or transaction may be exempted from one or more provisions of Subtitle IV where it is not necessary to carry out the rail transportation policy and the transportation or service is of a limited scope or the application of a provision is not needed to protect shippers from the abuse of market power. Section 209 is an important cornerstone of the Rail Act and the Commission is charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards.

Section 10505(c) permits the Commission, in its discretion, to limit the period of time the exemption is effective for, and 10505(d) provides that the Commission may revoke an exemption in part or in whole when the application of a section (s) is necessary to carry out the rail transportation policy.

The Committee has, however, placed three minor prospective limitations on the Commission's authority to exempt persons or transactions. First, Section 10505(e) provides that exemption orders shall require carriers to provide contractual terms for liability and claims consistent with section 11707. This limitation does not affect the ability of a carrier to offer alternative terms nor give the Commission the authority to require either any specific level of rates or services based on Section 11707, nor does it require the filing of those terms with the Commission. Second, the exemption authority may not be used to relieve a carrier of its obligation to protect the interests of employees. Third, under Section 10505(f) the exemption authority may not be used to authorize intermodal ownership otherwise prohibited by this title. This should not, however, be construed as a prohibition of the Commission's authority to approve intermodal ownership consistent with Section 11344.

Section 210. Intrastate Rates

Under existing law, intrastate traffic is initially under a different regulatory regime than interstate traffic. For example, requests for rate increases may be denied by state commissions using standards other than those applied by the Commission. While these requests may eventually be appealed to the Commission and ultimately granted, the time lag involved may still result in a loss of revenue. This disparate treatment of intrastate and interstate traffic is reflected in the difference between the average revenue to varible cost ratios for each type of traffic: 1.20 for intrastate traffic and 1.36 for interstate traffic in 1977. If the intrastate ratio had been equal to the interstate ratio that year, the railroads would have earned $400 million in additional revenues.

The purpose of this provision is to avoid the current time lag and loss of revenues frequently involved in the current practice of requiring railroads to go to state commissions first.

Section 211. Transition Rate Adjustments and Inflation-Based Rate Increases

Section 211 limits rate increases until December 31, 1982, to 10 percent per year, in addition to inflation. This provision is not applicable to surcharges, rates above the cost recovery percentages under Section 202 or any rate increase which results in a revenue-variable cost percentage of less than 150 percent. After 1982, on a semiannual basis, the Commission may prescribe a percentage rate increase or index for rail carriers to compensate for inflationary cost increases. Within 60 days after the Commission prescribes such percentage rate increase or index, rail carriers intending to be excluded from such percentage rate increase or index, shall notify the Commission, and all carriers participating in a particular route must agree to be excluded for the exclusion to be effective. The percentage rate index may include percentage increases within a specified range to allow carriers to recover a total percentage increase specified by the Commission as necessary to compensate for inflationary cost increases. The use of a range reflects the ability of certain commodities to absorb more or less than the specified percentage, but within the range.

Since the carriers' ability to set rates collectively is restricted elsewhere in the bill, carriers would not be able to meet in a rate bureau setting to determine in an expeditious manner at what point in the range they would choose to set particular rates. The Commission would be free under this section to specify a rate within the range which would apply to all rates, unless carriers opted out from the percentage increase completely or chose another point in the range. The opting out or choosing of another point in the range would have to be done in individual negotiations by carriers participating in particular routes if the Commission is able to promulgate rules under section 303(c) of this Act.

This section is an important provision of the bill benefiting shippers in that it provides a limitation on rates until December 31, 1982, at which time the cost recovery percentage will provide true captive shippers protection from market abuse.

Section 212. Customer Solicitation Expenses

This section provides that business solicitation or entertainment expenses incurred by rail carriers do not constitute illegal rebates or discrimination, if these expenses would be legal when incurred by a non-ICC regulated entity. This amendment treats rail carriers in a similar manner as other businesses. The Committee emphasizes that rebates remain illegal.

To discourage excessive solicitation or entertainment expenses, these expenses are not to be taken into account in determining the cost of service or the rate base for rate regulation purposes.

Finally, the Commission is directed to institute a rulemaking proceeding to establish standard and guidelines for authorized expenses under this section.

Section 213. Safe Railroad Reinvestment Requirements

Section 213 provides that the Secretary of Transportation may, after inspecting the track, physical facilities and operations of a rail carrier, notify the Commission that such carrier does not meet the safety requirements under Federal safety statutes, not limited to railroad safety satutes, and is not maintained and operated in a manner which protects the health and safety of the public and railroad employees. After notification, the Commission may, to the extent of its authority under section 11301, review the financial transactions of such carrier and prohibit any financial transactions of such carrier and prohibit any financial tonsctions which would unreasonably impair such carrier's ability to comply with applicable Federal safety statutes and operate in a manner which protects the health and safety of the public and railroad employees. Under section 11301, the Commission may approve the issuance of securities when the issuance complies with specified statutory standards, condition its approval, or deny approval, and may change previously imposed conditions or uses of such securities upon a showing of good cause. The Commission may exercise its authority under this section until such time as the Commission determines the safety deficiencies have been remedied.

As the Commission is not generally responsible for railroad safety, it is intended that the Commission shall rely upon evidence submitted by the Federal Railroad Administration's Office of Safety and affidavits by the carrier to assure that such deficiencies have been remedied. While the Commission's authority under this section ceases when the deficiencies are remedied, should the Commission be notified that such a deficiencies have resumed or other deficiencies are found by the Secretary, after inspection, to exist, the Commission's authority would be reinstated. Whenever it exercises its authority the Commission should take all steps necessary to avoid impairing a carrier's ability to obtain financing.

The Commission believes that the section provides a necessary check against the outflow of funds from the railroad industry when a transaction unreasonably impairs a carrier's ability to comply with Federal safety statutes to the detriment of railroad employees and the public at large. The Committee is acutely aware that several carriers which continue to have vast deferred maintenance resulting in frequent derailments and unsafe operating practices, have engaged in financial transactions involving major outflows of funds where such funds

ought to have been invested in rail plant and equipment. While the Secretary's and Commission's authority is discretionary, the Committee expects that the Secretary and Commission, when either finds a regular pattern of flagrant failures by a particular carrier to comply with Federal safety statutes and failure to maintain and operate in manner which protects the health and safety of the public and railroad employees, shall exercise such discretion.

Subsection (c) requires the Commission to submit an annual report to Congress setting forth findings with respect to whether rail carriers that are subsidiaries of other companies are involved in financial transactions which result in the direct or indirect transfer of funds or assets, including tax benefits, from the rail carrier to its parent company and which impair the ability of the carrier to meet the safety requirements of applicable Federal statutes and operate in a manner which protects the health and safety of the public and railroad employees.

TITLE III—RAILROAD INTER-CARRIER PRACTICES

Section 301. Compensatory Joint Rate Relief

This section amends chapter 107 of title 49 by adding a new section 10705a which provides standards and procedures for surcharging an existing joint rate or for cancelling the application of a joint rate to a particular route to increase revenues for rail carriers earning inadequate revenues from existing joint rates and divisions. The section is directed at eliminating losses from movements that are now below 110 percent of Rail Form A costs and forcing traffic on all lines that are not fully self-supporting to bear the burden of supporting those lines.

Subsection (a) authorizes a carrier to apply a surcharge increasing or decreasing the joint rate for a particular movement between two points without the concurrence of other parties to the joint rate provided the surcharge is applied in equal dollar amounts to all routes for the movement under the joint rate in which the carrier participates and, if the surcharge increases the rate, to all single line routes of that carrier between the same points. The purpose of this route equalization provision is to force connecting carriers to show that a movement over a route is meeting the minimum economic test that would justify continuing the use of the route.

A connecting carrier may cancel the surcharge on a route in which it participates after demonstrating that the surcharging carrier's revenues over the route without the surcharge exceed 110 percent of the surcharging carrier's variable costs after putting into effect a new division or new lawful rate which provides the surcharging carrier 110 percent of its variable costs. If no connecting carrier makes the demonstration required to cancel the surcharge before its effective date, a shipper may cancel the application of the surcharge to only one route after showing that it has no alternative route via any carrier or carriers to which the surcharge does not apply and that the surcharging carrier's revenues exceed 110 percent of the variable costs. The right of surcharge may be exercised by a particular carrier only once a year for a particular movement and only if that carrier has participated in all generally applicable rate increases to that joint rate for one year prior to the surcharge.

Subsection (b) authorizes a surcharge applicable to traffic which originates or terminates upon a line, owned by a single carrier, which carried less than 3 million gross ton miles of traffic per mile per year. The surcharge may be applied if the revenues under existing rates do not cover 110 percent of the variable costs of transporting traffic to or from the line plus 100 percent of the reasonable expected costs of operating and maintaining the line, up to 110 percent of the variable costs of transporting the traffic to or from the line plus 100 percent of the reasonably expected costs of operating and maintaining the line. The burden imposed by the surcharge must be reasonably apportioned among the shippers using the line. In deciding whether the apportionment is reasonable, the Commission shall consider that some traffic can bear rate increases more easily than other traffic.

Subsection (c) authorizes a carrier to cancel the application of a joint rate to a particular through route subject to that rate. Another carrier participation in that route may prevent the cancellation by making the same demonstration or by putting into effect the same type of new rate or division necessary to cancel a surcharge under subsection (a). If a cancellation becomes effective, the cancelling carrier may establish a local or proportional rate for that movement which will be subject to regulation in the same manner as any other rate. Any through rate of which that local or proportional rate is a part will divide as the separate factors of the through rate are made and not by prescribed divisions.

Subsection (d) provides that revenue changes resulting from surcharges shall accrue to the surcharging carrier so long as the revenues do not exceed 110 percent of the surcharging carrier's variable costs over a particular route. Upon demonstration by an intraterritorial connecting carrier that revenues from a surcharge exceed 110 percent of the surcharging carrier's variable costs, revenues in excess of 110 percent of variable costs will be divided with intraterritorial connecting carriers on the basis of existing divisions.

Subsection (e) provides that, when a carrier puts into effect a new rate or division in order to prevent a surcharge or cancellation from taking effect over a particular route, other carriers can require similar concessions in other routes under the same joint rates in which they participate, subject to the limitations set forth in subsection (e).

Subsections (f), (g), (h), and (k) set forth ancillary provisions with respect to surcharges and cancellations regarding notice, effect upon other sections of title 49, and proof of variable costs. Variable costs for a Class I carrier are to be determined through the use of unadjusted Rail Form A costs for that carrier in order to ensure there will be no litigation over costs. Costs for other carriers must of necessity be based on regional averages unless other cost evidence is available.

Subsection (i) is intended to grant class III carriers, i.e., those carriers with less than $10 million revenues, a special remedy for actions under this section which would have an adverse effect on competition. The Committee seeks through this subsection to avoid the need and burden of complex litigation that might arise out of the need for class III carriers to resort to the antitrust laws, although an available alternative, if they feel a carrier is engaging in anti-competitive activities. As a remedy for anti-competitive actions the Commission may prescribe new joint rates divisions which shall not

provide the surcharging or cancelling carrier with less than 110 percent of its variable costs unless the public interest requires lower earnings to avoid an adverse effect on competition.

Subsection (j) grants a class III carrier the right to seek the reduction of a surcharging carriers earnings over a route to 110 percent of its variable costs or such lower level as is required by the public interest in preserving service over that route. The Class III carrier may only seek this remedy if it has no other rail route with any carrier over which it may move the traffic to which the surcharge or cancellation applies, and if there is an actual risk of diverting that traffic to other modes or the shipper will suffer a significant loss of market share if the relief is not provided or the surcharge or cancellation will unduly impair a carrier's ability to earn an adequate rate of return.

Subsection (l) provides that the authority to apply new surcharges under subsection (a) expires three years after the effective date of the Act, unless extended for one additional year by the Commission, but that surcharges made before that date will continue to be lawful. The Committee expects to thoroughly reevaluate whether additional steps to provide carriers the means to earn adequate revenues from joint rates are needed before the expiration of subsection (a).

Section 302. Rate Bureaus

Section 302 places new limitations on the activities of rate bureaus. The first limitation is that carriers are not permitted to discuss, to participate in agreements related to, or to vote on single line rates after the effective date of the Act. The second limitation is that only carriers that "practicably participate in the movement" may vote on the setting of a joint rate. A carrier that "practicably participates" is one that actually carried traffic during the preceding twelve months or has agreed to carry traffic tendered to it during the twelve months following the setting of the rate.

The third limitation requires that only those carriers that participate in a particular joint rate movement may vote on the rate. This limitation becomes effective January 1, 1984, unless the Commission reports to Congress that such rate-making is unworkable. The Commission's report must be filed with the Congress by January 1, 1983, if it determines it is unable to promulgate rules to implement the restriction. Congress may disapprove the Commission's report. The Committee expects the Commission to use its broad authority under this title to promulgate rules which will allow it to comply with the January 1, 1984, deadline, and which will allow rail carriers to maintain their competitive position in the transportation industry. Rate bureaus would continue their publication and filing functions as they do now, with explicit antitrust immunity.

Section 303. Repeal of Long and Short Haul Prohibitions

This section repeals the arbitrary restrictions on long haul-short haul rates which originally provided a mechanical way for preventing railroad price manipulation designed to drive water carrier competition out of the market. Today railroads no longer have such a dominant position in the transportation market and the long haul-short haul prohibition stands in the way of effective back haul car utilization. The Committee has repealed this provision except for water car-

riers who can show that there is competition and the application of this provision is necessary to prevent anti-competitive behavior. The Committee does not intend for shippers to have standing under this section.

In existing law 10726 (c) uses an arbitrary test for discouraging rail rate flexibility where a rail carrier lowers a rate for the transportation of property in competition with a water carrier. Specifically a rail carrier which has lowered its rate cannot raise it again unless the Commission finds that the rate increase is for some reason other than the elimination of a water carrier. This provision is a good example of how railroads have been hamstrung by regulation. Subsection (c) has such a chilling effect on rate reduction that rail carriers prefer to lose customers rather than lower rates in order to meet water carrier competition. The Committee has specifically repealed this provision in order to encourage flexible and innovative pricing by railroads.

Residual retention of the long haul-short haul restrictions, under section 802 of the Committee bill, is provided only because the jurisdiction of the Committee is limited to railroads. The Committee expects that every effort should be made by railroads and the Commission to encourage efficient back haul business and innovative competitive pricing.

Section 304. Railroad Entry

Section 304 amends 49 U.S.C. 10901 to change the standard for the construction or extension of a railroad line. It authorizes a railroad which has been issued a certificate of public convenience and necessity to construct or extend a line to cross another carrier's property if the construction does not unreasonably interfere with the operations of the crossed line, the operation of such line does not materially interfere with the operation of the crossed line and the owner of the crossed line compensates the owner of the crossed line.

The new railroad transportation policy established by this bill emphasizes the need for increased intramodal and intermodal competition, and section 304 deals with intramodal competition among railroads. Under present law, railroads may not construct new rail lines or extend their lines without the approval of the Interstate Commerce Commission. As Congress moves toward significantly less regulation of the services offered by railroads, the Congress should encourage, rather than discourage, competition among railroads. Competition among railroads, or at least the realistic threat of competition, can serve as an important safeguard against inadequate service or unreasonable prices.

Under present law, the Commission may authorize the construction of a rail carrier only if it finds that the public convenience and necessity "require or will be enhanced" by the construction. This is a more stringent test than that applied to either the abandonment of rail lines or mergers. There does not appear to be any reason why the Commission should have to apply a more difficult standard for the construction of new facilities than for the abandonment of old facilities. Section 304 of this legislation will change the test applied by the Commission from "require or will be enhanced" to "require or permit". By making this change, the Commission would be required to apply the same standards to entry applications as to abandonment application.

Where a rail carrier has been issued a certificate of public convenience and necessity by the Commission and where the construction or extension of that line would cross another carrier, it is unclear whether the second railroad could block the construction by refusing to let the first railroad cross its property. The prevailing opinion is that, where the Commission has issued a certificate of public convenience and necessity, another regulated rail carrier cannot block construction. However, the issue has not been clearly settled. Thus, section 304 provides that, when a railroad has been issued a certificate of public convenience and necessity no other railroad may block construction by refusing to let the first railroad cross its property, provided that the construction and operation do not materially interfere with the operation of the second railroad and the owner of the crossing line compensates the owner of the crossed line. If the railroads cannot agree on the terms of compensation, the Commission may establish the compensation.

Section 304(e) provides that the carrier proposing to construct and operate a railroad line shall provide for the protection of the interests of railroad employees who may be adversely affected protection no less protective and beneficial to the interests of the employees then under section 11347. The Committee intends that the entering carrier shall be responsible for adversely affected employees of its own railroad as well as those employees of all other railroads.

Section 304(f) provides that after the construction of a line pursuant to this section, if a railroad carrier rearranges or adjusts its work work forces in anticipation of a transaction with the purpose or effect of depriving employees of benefits otherwise provided under this title, employee protection under 11347 shall apply.

Section 305. Service During Periods of Peak Demand

49 U.S.C. 11101 sets forth the common carrier responsibility that a common carrier "shall provide the transportation or services on reasonable request". Section 305 stipulates that a rail carrier will not be found to have violated its common carrier obligation to provide the "transportation or service upon reasonable request" if it enters into a contract for the shipment of goods.

Section 306. Reciprocal Switching

This section empowers the Commission to approve reciprocal switching agreements and joint service agreements upon the request of a carrier or shipper. In geographic areas where reciprocal switching is feasible, it provides competition to the benefit of shippers served. While the Commission now has the power to order the joint use of terminal facilities, its power to order reciprocal switching is less clear. In particular, reciprocal switching has been limited to situations where competition between rail carriers is not threatened. The Committee intends for the Commission to permit and encourage reciprocal switching as a way to encourage greater competition. Likewise joint service agreements should be encouraged in order to improve shipper service and efficiency.

The standard the Commission should use in approving agreements under this section should be where the requested action is "practicable and in the public interest".

The Commission may order protection for employees who are adversely affected by a grant of authority from the Commission which allows reciprocal switching.

Section 307. Car Service Compensation

Section 307(a) repeals the provision in existing law for incentive per diem on equipment. The Committee does not believe that the provision of an incentive element on freight equipment is the best means of attracting capital into the industry.

The rental rate for equipment should be sufficient to pay an adequate return on investment. An artificial element to stimulate investment imposed by the Commission is not the proper method of attracting capital.

In section 307(b), the Committee has added a sentence to the existing per diem section which requires the Commission to increase the basic per diem rate if the inadequacy of the per diem rate is the primary cause of a shortage of equipment.

Section 307(c) amends 49 U.S.C. 11122 by providing that carriers or other entities may file with the Commission a request to negotiate with respect to car compensations rates for rolling stock owned by other than a rail carrier or demurrage charges. Within 30 days after the Commission has received the request to negotiate, the parties shall begin to negotiate in good faith. If no agreement is reached by the 180th day of negotiations, any party directly involved in the negotiations may require the matter to be settled by the Commission. The Commission shall, within 90 days after submission of the matter to the Commission, render a binding decision, based on a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations.

The negotiations under sections 11122(c)(1)(A) and 11122(c)(1)(B) would be immunized from the antitrust laws if transcripts or sound recordings of the negotiations are submitted to the ICC. Such sound recordings or transcripts are to be kept confidential. No party participating in discussions under section 11122(c)(1)(A) shall be deprived of the right of independent action if such party refrains from executing any agreement reached in discussions or meetings under this section.

Section 308. Car Service Order for Exigent Circumstances

49 U.S.C. 11123(a) currently gives the ICC emergency powers when there is a "shortage of equipment, congestion of traffic, or other emergency requiring immediate action" in a "section of the United States". Section 308 limits this provision to instances where a shortage of equipment, congestion of traffic, or other failure in traffic movement exists which creates an emergency situation resulting in substantial adverse effects on rail service in the United States or a substantial region of the United States. The Commission may, for 30 days or less, suspend any car service rule or practice; take action during the emergency to promote the public interest regardless of car or equipment ownership on terms of compensation established between carriers when that action will best meet the emergency and serve the public interest; and give directions for priorities in embargoes or movements of traffic under permits.

The Commission may extend the order beyond 30 days only on certification by the Secretary of Transportation that a transportation emergency exists. The ICC is also directed to require the use during such emergencies of the employees who would normally have performed work in connection with the traffic subject to the action of the Commission.

Section 309. Employee Protection

Section 309 provides for the imposition of employee protection under section 11347 for transfers or the operation of or over the debtor's lines by another entity under Section 1172(b) and abandonments pursuant to section 1170 of the Bankruptcy Act of 1978. The provision puts employees of a railroad filing for bankruptcy under the new act on par with employees of rail carriers which petitioned for bankruptcy before October 1, 1978.

TITLE IV—RAILROAD COST DETERMINATIONS

Section 401. Uniform Accounting System

This provision makes section 11142, which requires the Commission to prescribe a uniform cost and revenue accounting and reporting system applicable only to non-rail carriers. Previous accounting and reporting systems developed by the Commission for rail carriers are to be replaced by the accounting and reporting requirements of Title IV of this bill.

Section 402. Railroad Cost Accounting

This section creates a Railroad Accounting Standard Board, consisting of the following members—

Comptroller General (GAO) Chairman,
Representative of the accounting profession;
Representative of the railroad industry;
Representative of major rail shippers;
Representative of the ICC;
Representative of small rail shippers; and
Representative of the economic profession.

The term of each member appointed to the Board is three years and the rate of compensation of Board members is established in the bill. The Board may draw upon personnel from the Federal government or private industry to serve as members of the Board, staff or on advisory committees and task forces.

The Board shall exist for three years. Within two years, it shall issue regulatory cost determination principles which shall identify economically accurate costs. The principles are to apply to the entire railroad industry to ensure consistency in railroad cost accounting practices.

The Board, in developing principles, is to take into account the specific regulatory purpose for which the costs are required; the degree of accuracy of the cost information necessary to meet regulatory purposes; the existing and future capability of rail carriers to provide such information and the relative benefits and costs of requiring carriers to develop additional capability to provide such information; the least expensive method of obtaining the costs at the appropriate degree of economic accuracy; and the means to maintain the

confidentiality of the costs while meeting the need for the information in regulatory proceedings.

After issuance of the principles by the Board, the Commission is to promulgate rules to implement and enforce the principles. The Commission, in promulgating rules to implement this section is to insure that the rules are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes.

Within 180 days after enactment, each rail carrier is required to file with the ICC a request for preliminary certification, which is to be granted by the Commission if it determines that the carrier's cost accounting system is in compliance with the ICC accounting standards in effect on the date of enactment of this legislation.

No later than 9 months after the promulgation of rules under Section 11163 of this title, each carrier must request final certification of its cost accounting system. Within 90 days after a carrier files a request for final certification, the Commission shall grant final certification if it finds that a carrier's most accounting system is in compliance with the rules promulgated by the Commission, under the standards issued by the Board.

If a request for final certification is denied, the rail carrier is to revise its cost accounting system and file a request for certification within 90 days after the date of such denial. If the Commission denies final certification upon the second request, the Commission is to prescribe a cost accounting system which can be adopted within a reasonable period and is in compliance with the purposes of this section.

Each rail carrier is to maintain a system that is in compliance with the rules promulgated under Section 11163 of this title. It is the Committee's intent that each railroad shall have discretion to develop its own accounting system so long as it complies with the principles and rules promulgated in accordance with this title.

Rail carriers are required to make cost data available to shippers, states, communities and other interested parties that are party to a Commission proceeding.

In order to obtain expense and revenue information for regulatory purposes, the Commission may promulgate rules which prescribe expense and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to rail carriers. The Commission, in promulgating rules for expense and revenue accounting and reporting requirements, shall ensure that such requirements are cost effective and not duplicative of the managerial and responsibility accounting requirements of carriers.

The Board shall file two reports with the Congress within 2 years after the effective date of this legislation. One report is to compare the cost of implementing the accounting standards to possible benefits. A second report is to recommend changes to the regulatory system, including maximum rate regulation, to integrate the new cost accounting standards and rules.

Section 403. Civil Penalties for Violations of Accounting Standard Provisions

A carrier failing to obtain final certification of its cost accounting system is to be fined not less than $50,000. Any party to a proceeding who knowingly discloses confidential data made available by a railroad pursuant to this title may be fined up to $50,000.

TITLE V—RAILROAD MODERNIZATION AND RESTRUCTURING ASSISANCE

Section 501. Coordination of Federal Assistance

Section 501 gives the Secretary guidance in carrying out restructuring assistance and the development of improved feeder lines. These guidelines include increasing efficiency by emphasizing higher density operations, improving asset utilization, and encouraging a self-supporting shipper-operated or State-operated rail program.

The Secretary must report to Congress within 90 days after the end of each fiscal year regarding the effectiveness of each federal grant or loan provided to the railroad industry.

The Secretary shall promulgate regulations defining feeder line for purposes of title V of this Act.

Section 502. Feeder Railroad Development Program

Section 502 amends the existing law regarding a railroad abandonment proceeding by requiring the rail carrier owning a line which has been approved for abandonment by the Interstate Commerce Commission to sell such line at net liquidation value to a purchaser who will continue to provide rail service if such a purchaser can be found. Net liquidation value shall not be less than the amount necessary to satisfy constitutional minimum requirements.

The Commission is empowered to require the abandoning rail carrier to provide the acquiring carrier trackage rights to a reasonable interchange point and to provide the abandoning carrier with appropriate compensation. The connecting carriers are required to enter into joint rates with purchasing carriers. Although an acquiring carrier is not required to employ all employees who worked on a line prior to its transfer to the acquiring carrier, it is anticipated that the Commission will, to the maximum extent practicable, require the acquiring carrier to use the employees who would normally have been employed on such rail line. An acquiring carrier may be exempt from any or all of the provisions of subchapter IV of title 49 of the U.S. Code until it is receiving a rate of return on the purchased line equal to that established by the Commission under 49 U.S.C. 10704.

This section also requires that a carrier desiring to abandon a line must attempt to find a potential purchaser of such line prior to identifying a line as subject to abandonment. The Commission may find that a rail carrier applying a surcharge under 49 U.S.C. 10705 is de facto abandoning the surcharged line and require the abandoning carrier to attempt to find a purchaser for the line. If the Commission deter-

mines that an abandoning carrier has not made a reasonable effort to find a potential purchaser, the Commission shall not issue a certificate to abandon the line.

Section 503. Restructuring Assistance

Section 503 adds a new section 518 at the end of title V of the 4-R Act (45 U.S.C. Section 821 *et seq.*) Section 518 supplements the existing Redeemable Preference Share Program of section 505 (45 U.S.C. Section 825) with a low cost program to assist railroads which engage in restructuring.

Section 518(a) authorizes the Secretary to provide assistance (either alone or as a participant with other investors) to any railroad or its subsidiary to achieve significant restructuring. The assistance may be used for the purchase of securities or the rehabilitation, improvement, or acquisition of facilities (including track, maintenance, equipment and related labor protection costs) which the Secretary, based upon a restructuring plan provided to the Secretary under section 518(b) or as part of a restructuring project supported by the Secretary under section 5(n)-(d) of the Department of Transportation Act, or both, determines will contribute to significant railroad restructuring that would not likely be achieved without federal assistance. The assistance may also be used for purchase or rehabilitation of feeder lines. It is the Committee's intent that states, communities, or shipper groups that intend to purchase a feeder line under the provisions of section 502 are to be considered railroads for the purposes of this section.

Section 518(b) authorizes the Secretary to provide assistance to railroads by making loans, including the purchase of trustee certificates from bankrupt railroads, but only if the restructuring is necessary for the establishment of a self-sustaining railroad. Where the Secretary determines that an equity financing is essential to a restructuring, the Secretary may purchase Senior Preferred Stock.

Section 518(c) requires that debt instruments (including trustee certificates) provide that beginning on the fifth anniversary of the date of original issuance interest shall accrue at a rate equal to ¾ of the cost of borrowing to the United States (determined by the Secretary of the Treasury as closely as possible to the date that financing agreement is executed). Beginning on the sixth anniversary of the date of original issuance, interest and principal shall be payable in equal annual installments such that on a date not later than the 20th anniversary of the date of original issuance, all principal and all accrued interest will have been repaid. If the Secretary cannot find that a railroad has the ability to repay an unsecured loan, the Secretary may also provide debt financing by securing the United States through a lien and a priority of payment which are senior to those of all present and prospective unsecured creditors but junior to those of all present and prospective secured creditors and claimants having a priority of payment over secured creditors.

Section 518(d) provides that, with the approval of the reorganization court, the Secretary and the trustee may agree to convert trustee certificates into Senior Preferred Stock if the Secretary makes the determination required under section 518(b).

Section 518(e) establishes that Senior Preferred Stock is—

(1) mandatorily redeemable over a maximum twenty year period beginning no later than the sixth anniversary of the date of

original issuance, and requiring payment of cumulative dividends beginning on such sixth anniversary at a rate equal to one-half the cost of borrowing to the United States (determined by the Secretary of the Treasury as closely as possible to the date a financing agreement is executed) and based upon the average outstanding par value (which declines as redemption payments are made) for the preceding year; dividends and redemption payments being mandatory to the extent permitted by state law;

(2) optionally redeemable and returning outstanding par plus any cumulated and due dividends;

(3) nonvoting with an initial par value of $10,000;

(4) senior only to all other equity securities of the issuer; and

(5) issued by the corporation owning all of the facilities to be rehabilitated or improved or which is acquiring property with Federal assistance, which corporation has a capital structure at the time of issuance consisting solely of equity, thus permitting control of subsequent debt displacements of security.

Section 518(*f*) requires the railroad and/or its subsidiary receiving assistance to agree to terms which the Secretary believes will assure that significant restructuring will occur and that all assistance will be repaid and used as intended.

Section 518(*g*) provides that should a railroad or its subsidiary default on a financing agreement, the Secretary may appoint two members to the board of directors of the signatory railroad, the subsidiary, or both, at the option of the Secretary. The Secretary also has all remedies provided for contractually in the financing agreement and those inherent in law and equity.

Section 518(*h*) requires each railroad or subsidiary which applies for assistance under section 518(*a*)(1)(B)(*i*) to present the Secretary with a restructuring plan for the railroad approved by the railroad's board of directors, which would assist the Secretary in determining the project's potential for further restructuring and the railroad's or its subsidiary's ability to repay the assistance.

Section 504. Authorization of Appropriations

Section 501 adds section 519 to title V of the 4-R Act. This section authorizes such sums as are necessary, not to exceed $1,475 million for fiscal years 1980 through 1984, for the purpose of providing financial assistance under section 518 of the 4-R Act. At less 5 percent shall be available for the purchase or rehabilitation of feeder lines.

Section 505. Extension of Redeemable Preference Share Financing

Section 505 amends the 4-R Act to extend redeemable preference share financing from September 30, 1980, to September 30, 1982.

Section 506. Technical and Conforming Amendments

Section 506 makes a number of technical and conforming amendments.

TITLE VI—CONRAIL TITLE V LABOR PROTECTION

Section 601. Monthly Displacement Allowance

A protected employee shall be paid a monthly displacement allowance as follows:

(*1*) *Non-operating Employees.*—Non-operating employees (i.e., other than train and engine service employees) will receive an hourly guarantee, based upon the rate of the position they held on September 1, 1979. This guarantee will be increased to reflect subsequent general wage increases, and will be increased whenever the employee, in the exercise of his or her seniority, is able to secure a higher rated position. If, as a result of a reduction in the number of positions available, a protected employee is required to exercise seniority to a position with an hourly rate less than the guarantee, he or she will receive a monthly guarantee payment representing the hourly differential multiplied by the number of hours in the new position's straight time work schedule for the claim month. If a protected employee is unable to retain any position, he or she will receive the guaranteed hourly rate for the number of hours the employee would have worked on a straight time basis if he or she had retained his or her previous position.

(*2*) *Maintenance-of-Way Employees.*—Maintenance-of-Way employees often work as portable equipment operators in the summer when extensive track rehabilitation is undertaken, and as trackmen in the winter when only routine maintenance can be performed. If the above described non-operating formula were applied to them, they would receive automatic "windfall" payments for the winter months during which they customarily occupy positions which pay less.

To avoid these "windfall" payments, a separate calculation is proposed for maintenance-of-way employees. Each protected employee will be afforded his average monthly compensation, which is defined as the compensation received for the 12 months preceding January 1, 1978, and dividing it by 12. If, in any month, a protected employee's earnings are less than the guarantee, a payment will be due equal to 75 percent of the difference. At the end of the calendar year the employees' annual guarantee will be compared to his or her annual earnings plus monthly guarantee payments. If the annual guarantee is larger, the full difference will be paid. If the annual calculation demonstrates that all or a portion of the monthly guarantee payments represent an overpayment, the employee will be entitled to no further guarantee payments until the overpayment is recovered.

(*3*) *Operating Employees.*—Operating employees (i.e., train and engine service employees) retain their current monthly guarantee subject to two important modifications. Average 1977 Conrail earnings will be calculated for each ICC classification of operating employees. These values will be upgraded by subsequent general wage increases, and will constitute maxima. Those protected employees whose current monthly guarantees exceed the applicable maximum will have their guarantees reduced to the maximum. The second modification is an annual calculation in accordance with the maintenance-of-way formula described above. If a protected employee's earnings are less than the guarantee in any month, 75 percent of the difference will be paid. At the end of the calendar year, a comparison of guarantee and earnings on an annual basis will determine whether an additional payment will be made or whether future payments will be withheld pending recovery.

(4) *Non-contract Employees and Employees Who Have Been Transferred.*—No change is proposed in the guarantee formula currently applicable to these employees. Non-contract employees receive salaries which do not include overtime compensation. Additionally, they receive merit increases rather than general wage increases, so that their guarantees have not changed since the formation of Conrail. Consequently, they have not been the recipients of "windfall" payments as is the case with collective bargaining employees.

Transferred employees have frequently purchased new homes at a price reflecting the standard of living they thought they were assured of on the basis of the current guarantee formula. A sudden reduction in their monthly income might place them in an untenable financial position. There are approximately 350 employees who have transferred.

There are two other changes made in this section. All unemployment compensation benefits received by any protected employee and any compensation received by any protected employee for non-railroad employment must be set off against his MDA. This change will ensure that the MDAs of all protected employees, not merely those who are deprived of employment, will be reduced by unemployment compensation benefits received and non-railroad earnings.

An additional change is made by this section. It calls for the employee, or his class or craft representative, and the employer to agree on a procedure by which the employee will report his non-railroad earnings in order that they may be set off against his MDA. It also calls for an agreed upon procedure by which the employer is kept apprised of the unemployment benefits currently paid to the employee, also for the purpose of off-setting his MDA. These procedures are necessary to ensure that the reporting/investigative burdens are shared by the employer and the employees, rather than having the burden of investigation fall solely on the employer, as now exists.

Sec. 602. Duration of Monthly Displacement Allowance

Under current law, an employee who had 5 or more years of service as of January 2, 1974, is eligible to receive MDAs until the employee reaches age 65. An employee who had fewer than five years of service as of January 2, 1974, is eligible to receive MDAs for a period equal to the number of years he or she has been an employee. MDAs terminate in the event a protected employee dies, retires, resigns, or is dismissed for cause. MDAs are suspended for the period of disciplinary suspension for cause; failure to work due to illness, disability, or voluntary furlough; and failure to take or keep a position available through the exercise of seniority rights.

This legislation would restrict the payment of the MDA in two situations. First, a protected employee's entitlement to an MDA would be suspended for the period that the employee fails to work for reasons beyond the control of his or her current employer due to strikes, floods, snowstorms, and similar occurrences. Second, the legislation would require a protected employee to claim an MDA within three months of entitlement and would require that entitlement to claims be resolved within 150 days after a claim is filed. This provision will eliminate bookkeeping problems caused by procrastination in filing a claim for an MDA, and enable the Corporation to assess more accurately expected payments for labor protection.

In addition, this legislation would clarify that the period of protection for a protected employee with less than 5 years of service begins to run from the beginning of the first month for which the employee receives an MDA.

Sec. 603. Training and Transfer

Subsection 505(d) of the current law sets out transfer procedures by which the Corporation may require a protected employee deprived of employment to transfer to a bona fide vacancy within the employee's class or craft.

This legislation addresses restrictions on manpower utilization by including employees in the marine crafts and unemployed Penn Truck Lines, Inc. truck drivers in the provisions permitting transfer of adversely affected employees to another class, and by offering retraining programs to make the interclass transfer provisions meaningful.

Sec. 604. Payment, Audit and Report

Under existing law, the Corporation (and where applicable the Association, replacement operators, or acquiring railroads) is responsible for making payments under this title to protected employees. The Corporation then certifies these paid amounts to the Railroad Retirement Board, which reimburses the Corporation in full up to a total amount of $250 million. The Railroad Retirement Board has no statutory authority to audit or evaluate the employee protection program.

To a significant extent, the effectiveness of the employee protection program reflects the degree of success the Corporation is having in improving management of its workforce. However, under existing law, no one is formally charged with the task of evaluating the program with a view toward improving either the program or encouraging the Corporation to improve the management of its workforce. It is important, therefore, to ensure that some agency or body has statutory authority to both audit the program and evaluate the effectiveness of the employee protection program. As Conrail's Government banker and monitor, the Association is in a unique position to accept this responsibility.

This section would redesignate section 509 of the 3-R Act as section 509(a) and increase the amount of funds authorized to be appropriated under title V by $235 million to a new authorization level of $485 million, make training and retraining costs incurred by the Corporation under revised section 505(d)(d)(D) reimbursable costs, and confirm existing practice whereby title V funds are used to reimburse the Railroad Retirement Board's unemployment insurance account for unemployment compensation paid to protected employees.

An additional $235 million is authorized to fund the substantially reduced level of benefits afforded by these amendments. This sum would fund the program during a transition period, after which the carriers employing protected employees would be responsible for the payment of benefits without reimbursement.

In addition, this section would add two new subsections to section 509 that impose auditing and reporting responsibilities upon the Association. Section 509(b) would direct the Association to conduct a program audit of the payment of benefits under title V and evaluate

the effectiveness of the provisions of title V in providing a reasonable level of protection to protected employees and enabling the Corporation to improve management of the protected employees in its workforce. The Association would be afforded access to pertinent documents for the purpose of facilitating its audit and evaluation functions. Section 5099(c) would require the Association to transmit an annual detailed and comprehensive report of its periodic audit and evaluation to the Congress and the President within 90 days after the end of each fiscal year.

Section 605. Technical Amendments

This section makes technical changes to the table of contents of the Regional Rail Reorganization Act of 1973.

It permits the Secretary of Transportation and the Secretary of the Treasury to delegate their responsibilities under the 3-R Act, including membership on the Board of Directors of the United States Railway Association and its committees, to a representative.

It amends the definition of "deprived of employment" in subsection 501(6) to exclude from the definition, and thereby exclude from coverage under the protection program consistent with changes made in this title, failure to work due to occurrence beyond the control of the Corporation, the replacement operator or the acquiring railroad. It also adds a definition of "compensation" to section 501 so that it is clear the work means only earnings in employment subject to the Railroad Retirement Act rather than such earnings plus earnings from non-railroad employment and compensation for personal injury claims against the employer.

Section 606. Effect on Other Laws

Nothing in this title is intended to affect any law, regulation, court order, or obligation relating to equal employment opportunity.

TITLE VII—SUPPLEMENTAL TRANSACTIONS

Section 701. Supplemental Transactions

Section 701 repeals the provisions of section 305 of the Regional Rail Reorganization Act and substitutes a new supplemental transaction provision designed to permit supplemental transactions to improve rail service in the Conrail region under a wider range of circumstances than might be permitted under existing section 305.

Section (a)(1) of section 305 provides that if the Secretary determines, upon petition or his own initiative, that a transaction supplemental to the Final System Plan would promote the establishment and retention of financially self-sustaining rail service in the region, the Secretary shall, upon making the other determinations required by subsection (a)(2) develop a supplemental transaction proposal.

Under subsection (5)(A), the Secretary may develop a proposal only if he determines that restructuring of rail properties would preserve and enhance rail service in the region, a proposed transferee carrier would be financially and operationally capable of assuming the obligations of the transferer carrier on a self-sustaining basis, and, unless the Corporation is facing imminent insolvency, the transaction will either not have any adverse affect on the Corporation's financial and operating performance, or will result in a net financial benefit for the Federal Government.

The Secretary may propose a transaction on the basis of the net financial benefit test only if the transaction is to be consummated before the certificates of value are to be redeemed under section 306(c) of the 3-R Act or the government and the transferors of property to the Corporation reach agreement as to the amount owed the transferors by the government. For purposes of the net financial benefits test, federal funds provided to Conrail shall be considered as funds which would not have to be provided if operating losses would be reduced by transferring property from the Corporation.

If the Finance Committee of the Association is willing to forgive any of the obligations of the Corporation, the Secretary may take into account the present value of these obligations when making his findings under subsection (a).

Each proposal developed by the Secretary must contain a full and complete description of all essential elements and must be published in the Federal Register and submitted to the Association and the Commission for their review.

If the Secretary does not make a proposal requested by the State, the Secretary shall explain why in a notice published in the Federal Register.

The price to be paid the Corporation for properties transferred under a proposal shall be the constitutional minimum value except that if the transfer is to be consummated prior to the settlement of reorganization claims, the price may be the difference between the constitutional minimum value of the transactions and the value of the net financial benefit of the transaction to the government. Any forgiveness of Conrail's obligations to the United States shall be considered compensation for the purposes of this section.

Subsections (b), (c), (d) and (e) outline the procedure for review of a proposal. The proposal is to be reviewed by the Commission and the Association, which both have an advisory role, and the Special Court, which shall have the duty of determining whether the proposal meets the standards of subsection (a)(2) and (a)(6). The subsections sets delinite time limits for all review proceedings.

The time limits must be met unless a proposed transferee or transferor (other than the Corporation) fails to notify the Secretary that the proposed transaction is acceptable. Such a transferee or transferor's failure to accept the proposal terminates the proceeding and no further judicial or administrative proceedings can be held regarding the transaction.

If the transferee and transferor (other than Conrail) accept the transaction the Special Court must determine whether the transaction complies with subsections (a)(2) and (a)(6). If the transaction does not meet the requirements of subsection (a)(2), the transaction must be rejected. If it does not meet the requirements of subsection (a)(6), the Secretary is given the opportunity to submit a modified proposal for further review.

The Corporation, as the only potential involuntary transferee, is guaranteed the right to appear in any proceeding before the Special Court regarding the transfer of any of its properties. Other parties, after petition to the court, would be allowed to appear.

Review of the Special Court's decision shall be permitted in accordance with section 209(a)(3) of the 3-R Act.

Within five years after a transaction involving properties of the Corporation, the Federal Government shall have the right of first refusal to acquire those properties if they are to be sold by the transferee.

The section also requires the Secretary to develop a proposal for the transfer of all rail properties of the Corporation in Connecticut and Rhode Island within 180 days of the date of enactment, if the Secretary makes the findings under this section. The Committee is aware of the rail situation in Connecticut and Rhode Island, and concerned that rail service be maintained to the maximum extent possible. The Secretary must afford interested parties an opportunity to comment before developing a proposal, and must determine whether he can make the findings under this section which would allow him to transfer property.

Other rail carriers have expressed interest in the property of the Corporation in Connecticut and Rhode Island. The Committee is interested in reserving rail service in both states to the maximu extent possible, and, if such a transfer proposal is feasible, believes that all property should be transferred to a carrier which will operate the service without Federal subsidy.

Section 701(c) provides that in any supplemental transaction under section 305 of the 3-R Act, the acquired railroad shall offer employment and employment protection and benefits to the employees of the aquired railroad as well as to its own employees who are adversely affected by the acquisition as may be agreed upon by the employees' representations prior to the acquisition. Unless and until such agreements are reached, the acquiring rail carrier shall not enter into purchase agreements pursuant to section 305 of the 3-R Act.

TITLE VIII—MISCELLANEOUS PROVISIONS

Section 801. Effective Dates.

Section 801(a) provides that the provisions of this Act, and the amendments of existing law made by this Act, take effect on October 1, 1980, unless otherwise specifically provided. By such specific provision, Title VI is effective on the date of enactment of this Act, except section 601.

Section 801(b) provides that any applications, actions, or proceedings pending before the Department of Transportation, Interstate Commerce Commission, or any court on the effective date of this Act are to be adjudicated without regard to the provisions of this Act. The Committee intends that all such proceedings be determined based on the existing law. This provision is not meant to impair the ability of the Commission or the Department to institute a new proceeding where appropriate, and consider the record of an existing or terminated proceeding.

Section 802 Effect of Amendments

Section 802 merely clarifies that enactment of this act is not meant to alter existing law regarding the relationship between water carriers and rail carriers, with respect to competition and coordination, or to make lawful an unfair, destructive, or predatory competitive practice. The Committee intends that this Act shall not affect existing law regarding standing of water carriers to seek relief for violations of the Interstate Commerce Act.

APPENDIX

The Rail Act of 1980

Background Materials

Part I—Annotated Chronology of Federal Railroad Laws (Economic)

Commerce Act (*February 4, 1887, 24 Stat. 379*).—This is the basic Interstate Commerce Act. It covered all rail or rail/water common carriage except for intra-state carriage. Provided for:

- tariff publication;
- 10 days' notice;
- unlawful to receive more or less than published;
- rates must be just and reasonable;
- no discrimination permitted;
- long haul must be charged more than short haul;
- free or reduced rates for government or charity;
- Commission created (five members);
- Commission power to hear complaints;
- carriers required to afford facilities for interchange of traffic without discrimination;
- pooling and divisions of revenue prohibited;
- through rates must be published;
- no carrier required to let another carrier use its tracks but interchange is required;
- Commission may require annual reports and uniform system of accounts and has authority to inquire into carriers management;
- Commission to issue orders and seek their enforcement in court; and
- until 1935 Commission submitted an annual report of its own to the Secretary of Interior for transmission to Congress (In 1935 the law was changed permitting the Commission to report directly to Congress).

Act of March 2, 1889 (*25 Stat. 856*).—Related primarily to tariff publication: (1) posting of schedules and tariffs; (2) reductions require three rather than 10 days, and (3) joint rates brought under anti-discrimination requirement. It also gave the Commission subpoena power and the right to have any U.S. District Attorney act to enforce the law.

Elkins Act (*February 19, 1903, 32 Stat. 847*).—Made rebates to shippers unlawful.

Hepburn Act (*June 29, 1906, 34 Stat. 584*).—The Hepburn Act was a major extension and updating of the original Interstate Commerce Act. It expanded the Commission from five to seven members, added pipelines except water or natural gas, added express companies, sleeping car companies and most other railroad-related facilities within the scope of the Act.

Specifically the Act made railroads "common carriers" and spelled out "common carrier duties" including (1) the duty to furnish cars, (2) the duty to provide sidings, etc., (3) the duty of strict liability for lading, (4) changed time for publication of both increases and decreases to 30 days, (5) required schedules to show joint and combination rates, (6) gave Commission authority to prescribe a rate or practice where it found an existing one to be unjust or unreasonable, (7) gave authority to Commission to prescribe joint rates and fix divisions, (8) required additional annual report data including accident causes, (9) established the commodities clause, i.e., carrier cannot haul its own product, and (10) permitted Commission to award damages.

Mann-Elkins Act (June 18, 1910, 36 Stat. 539).—The Mann-Elkins Act was a water carrier protection act and gave the Commission new powers which had the effect of shifting the burden of justifying rate changes onto the railroads. Specifically the Act (1) tightened up the discrimination provisions of long haul-short haul, (2) prohibited predatory pricing against water carriers, (3) added a duty to provide reasonable facilities and rates for through routes, (4) required confidentiality of bill of lading data, (5) made unreasonable regulations and practices for handling and transporting property unlawful, and (6) gave the Commission the power to suspend a rate increase pending hearings up to ten months.

Panama Canal Act (August 24, 1912, 37 Stat. 566).—The Panama Canal Act gave the Commission jurisdiction over rail/water movements but more significantly, it prohibited railroads from owning water carriers in competition with rail routes. The Act successfully headed off transportation companies.

Valuation Act (March 4, 1913, 37 Stat. 701).—The Valuation Act gave the Commission the responsibility for ascertaining the value of all property owned or used by every common carrier.

Cummins Amendment (March 4, 1915, 38 Stat. 1196).—This law related to strict liability for lading, set time limits for filing and permits rates based on value.

Second Cummins Amendment (August 9, 1916, 39 Stat. 441).—Further clarification of fact that carrier could limit liability where rates had been authorized based on value. The act also defined "ordinary livestock."

Esch Car Service Act (May 29, 1917, 40 Stat. 101).—The term "car service" was defined to include movement, distribution and returns of cars. Each carrier was given a mandate to have reasonable car service practices and unreasonable practices were made unlawful. The Commission ws given authority to require carriers to file their car service rules. The Commission was also given emergency authority to require movement or distribution of cars.

Commission Division Act (August 9, 1917, 40 Stat. 270).—Froze the filing of rate increases until after January, 1920 and enlarged the Commission to nine members with no more than five from the same political party.

Transportation Act of 1920 (February 28, 1920, 41 Stat. 474).—The Transportation Act of 1920 was an ambitious attempt to give the Commission a more positive role in structuring an optimum railroad system for the country. The 1920 Act introduced the requirement for

a carrier to obtain a certificate of convenience and necessity in order to extend its lines, begin new lines, or abandon old lines. The Act reinforced the duty carriers had to provide cars and equipment and the power the Commission had to force such action. It authorizes the Commission to prescribe minimum as well as maximum rail rates and to prescribe minimum and maximum rates for joint rail-water movements. The time in which a rate could be suspended was cut back to 120 days and for the first time the Interstate Commerce Act was amended to include a provision recognizing the need for rates to match revenue needs. The Commission was given authority over joint use of facilities consolidations and mergers. In addition, pooling of freight and proceeds were permitted and the Commission was given authority to adjust divisions of revenue where there were joint rates, taking into consideration the carrier's financial situation and the public interest.

The 1920 Act also enlarged the size of the Commission to 11 members and placed restrictions on inter-locking directorates and various insider stock activities.

Act of June 7, 1924 (43 Stat. 633).—The Act simply related to the time for bringing actions for recovery of overcharges before the Commission

Act of July 3, 1926 (44 Stat. 835).—The Act simply extended strict liability for lading to property re-consigned or diverted in accordance with tariffs.

Mayfield-Newton Act (March 4, 1927, 44 Stat. 1446).—The 1927 Act clarified that with respect to strict liability for lading, an action could be brought against the carrier in the district or state where the carrier operated. It also permitted the Commission to provide reduced rates for transportation of property in case of earthquake, fire, flood famine, drought, epidemic, pestilence or other disaster. The period in which a proposed rate could be suspended was changed from 120 days to 7 months.

Maples Amendment (April 23, 1930, 46 Stat. 251).—The 1930 amendment to the Interstate Commerce Act simply extended the time for filing a claim with respect to the strict liability for lading from 4 months to 9 months.

Emergency Rail Transportation Act (June 16, 1933, 48 Stat. 211).—The Emergency Transportation Act of 1933 placed a moratorium upon job reductions resulting from carriers trying to economize during the Depression by consolidating operations. No consolidations or operations took place under the Act. The Act also removed the standard for balancing revenue needs and rates (contained in the 1920 Act) and substituted that the Commission should give the "due consideration . . . to the need for adequate and efficient service at lowest cost consistent with furnishing such service . . ."

Act of June 27, 1934 (48 Stat. 1264).—The Act was another effort to use the railroad system for combatting the effects of the Depression. Specifically, it gave the Commission authority to permit reduced rates for transportation of commodities specified by the Commission with the object of improving nationwide housing standards and improving employment and stimulating industry.

Motor Carrier Act (August 9, 1935, 49 Stat. 543).—The Act brought motor carrier regulation under the Interstate Commerce Act. Of lesser note, it authorized the Commission to report directly to Congress

rather than through the Secretary of Interior and laid the foundation for port equalization rates.

Transportation Act of 1940 (September 18, 1940, 54 Stat. 899).—The Transportation Act of 1940 made a number of technical changes in the Interstate Commerce Act. Most noteworthy among those changes was its encouragement of umbrella ratemaking whereby the rates set for one mode took into account the effect such rates would have on competing modes. Additional time was permitted for the filing of claims under strict liability for lading. The joint ownership or use of spurs, industrial teams, switching or side-tracks was liberalized, and a duty was imposed on railroads to establish through routes with connecting common carriers by water. The Commission was also given authority to transmit its recommendations for legislation directly to Congress. Furthermore, the 1940 Act authorized the Commission to divide itself into divisions so as to better do its work.

Reed-Bulwinkle Act (June 17, 1948, 62 Stat. 472).—The Act reversed Supreme Court decision and made collective rate making permissible for railroads. Specifically it added Section 5(b) to the Act whereby it placed a duty upon the Commission (upon application of carriers with a grant of anti-trust immunity or upon its own motion) to approve agreements between carriers if it finds them to be in the furtherance of the National Transportation Policy. This is the so-called rate bureau provision. The Reed-Bulwinkle Act also made it possible for carriers under Section 20(b)(1) i.e. 49 U.S.C. 11361, to change mortgages or provisions of loans except equipment trusts certificates. Such changes require the approval of the Commission.

Act of August 2, 1949 (63 Stat. 486).—The Act made a public hearing discretionary where the Commission was deciding the joint use of facilities. It also gave the Commission discretion where the Commission was considering mergers, consolidations or trackage rights. The Act also raised the Commissioners' salaries to $15,000.

Act of July 11, 1957 (71 Stat. 292).—The Act amended Section 1 (1) (49 U.S.C. 10726(a)(2) to permit carriers to charge the same rate over a circuitous route to meet the charges of carriers of the same type operating over a more direct route. In addition, the Act required section 22 government rates to be submitted to the Commission in writing unless national security was involved.

Transportation Act of 1958 (August 12, 1958, 72 Stat. 568).—The Act gave the Commission greater authority with respect to intrastate rates, particularly when the issue was one of discrimination. The 1958 Act also represented the first departure from "umbrella rate-making" since the Commission's construction of the 1940 Act. Finally the 1958 Act permitted more speedy approval of discontinuance of rail passenger service.

Act of September 27, 1962 (76 Stat. 645).—The Act made the long-short haul discrimination provisions not applicable to express companies.

Act of May 26, 1966 (80 Stat. 168).—The Act introduced the concept of incentive compensation for ownership of freight cars. Out of this authority grew the incentive per diem provisions of the Commission.

Act of January 2, 1974 (87 Stat. 1021).—The Act gave the Commission the authority to provide emergency directed service, i. e. 49 U.S.C. 11125.

4–R Act (February 5, 1976, 90 Stat. 31).—The 4–R Act represented a major overhaul of the Interstate Commerce Act. Procedures at the Commission were speeded up by the imposition of statutory time limits. Rate making was excluded unless there was "market dominance" and minimum rates were permitted if they "contributed to going concern value" of the carrier. Car service charges (demurrage and per-diem) were to be adjusted by the Commission to better reflect equipment costs and national needs. The adequacy of revenue standard was placed at a level permitting an economic profit on capital. Umbrella rate-making was once again stamped out and a number of innovative pricing options were introduced including peak-demand pricing. Merger procedures were expedited and labor protection added by statute to consolidations or abandonments.

Rail Transportation Improvement Act (October 19, 1976, 90 Stat. 2614).—The Act primarily cleaned up technical mistakes of the 4–R Act.

Department of Energy Organization Act (August 4, 1977, 91 Stat. 565).—The Act removed transportation of oil by pipeline from Commission jurisdiction and put it under the Department of Energy.

Part 2.—Statutory Development of Rail Regulation 1887–1979

The purpose of this section of the Background Materials is to discuss the regulation of railroads by the Interstate Commerce Commission in the context of the following matters:

Scope of Regulation
Common Carrier Duties
Rate Standards
Rate Procedures
Freight Car Jurisdiction
Trackage Jurisdiction
Relationships among Railroads
Revenue Divisions
Corporate Requirements
ICC Organization
ICC Procedures

It is not the purpose of this discussion to include each and every addition to the law which expanded or changed the authority of the Commission to regulate railroads. To the extent practicable, however, the evolution of the law will be noted. Part I of these Background Papers shows in a nonfunctional way the expanding regulatory framework through the enactment of laws between 1887 and the present.

SCOPE OF REGULATION

The 1887 Act applied to any common carrier engaged in the transportation of passengers or property by railroad or partly by railroad and partly by water in the United States or between the United States and a foreign country. The 1887 Act excluded transportation of passengers or property shipped wholly within a state. It also defined "railroad" to include all bridges and ferries operated in connection with any railroad and all lines operated under lease or agreement.

In 1906 the transportation of oil or other commodities by pipeline except for water and natural gas was brought within the jurisdiction

of the Interstate Commerce Commission. It remained within the Commission's jurisdiction until passage of the Department of Energy Act on August 4, 1977.

In 1906 the term "common carrier" was defined to include express companies and sleeping car companies. The term "railroad" was further defined so as to include all the facilities used by a railroad in connection with transportation.

The scope of regulatory authority over railroads by the Commission continues to be all-inclusive.

COMMON CARRIER DUTIES

The 1906 Act was the first specific reference to common carrier duties, and specifically provided that carriers had a duty to furnish upon reasonable request, car service for the movement of interstate traffic tendered to it to the best of its ability and without discrimination. In 1917, and again in 1920, car service was defined so as to include movement, distribution, exchange, interchange and return of cars. Also the term "car service" was broadened to include locomotives and other vehicles used by a railroad for transportation purposes.

In 1917 the law was made clear that every carrier had a duty to establish, observe, and enforce just and reasonable rules and practices with respect to car service, and all unjust and unreasonable rules and practices were declared unlawful. In 1920 the duty was further expanded to make certain that the equipment was safe and that there was an adequate supply.

Strict liability for lading was imposed upon railroads by the 1906 Act. In other words, carriers were responsible for any damage under Commission regulations, although a shipper's right for actions in a court of law were preserved. In 1915 the law was further amended with respect to hidden damage, and carriers were prohibited from limiting the time period for filing claims to less than 90 days or from limiting suits to less than two years. In 1916 liability of carriers was clarified so that some limitation was placed upon the liability—at least to the extent that the rate had been set based upon a certain value.

By 1930 the time for filing claims for damage to shipments was extended from four to nine months, and the 1940 Act included joint carriage between rail and water under the strict liability for lading regulations.

Confidentiality of lading data was required in 1940. It became unlawful for a carrier to disclose to anyone the nature of shipments except where required to do so in a court of law.

Reasonable practices and regulations by carriers in connection with shipments were required by law beginning in 1940. It become unlawful for carriers to require unjust or unreasonable classification, regulations, or practices. Not until the 4-R Act in 1976 was the reasonableness of demurrage charges put into the law. At that time the 4-R Act required that demurrage charges be computed and established in a manner which would fulfill national needs for freight car utilization and maintenance of an adequate freight car fleet. Prior to that time demurrage charges were held very low because of the necessity for railroad carriers to be "reasonable". Consequently, many shippers found rail cars to be cheap storage.

The publication of tariffs became a disclosure requirement from the time of the original Interstate Commerce Act in 1887. Every carrier was required to print and keep for public inspection schedules showing rates for transportation, places between which transportation was offered, classification of freight, terminal charges, and other rules and regulations felt necessary by the Commission. The schedules also had to be filed with the Commission. That requirement has continued to date.

No rate increases were permitted under the original act unless the carrier gave ten days public notice. In 1889 the law was amended to permit reductions in rates after three days notice. In 1906 the law was again changed requiring 30 days notice for either an increase or decrease in rates. Those requirements have remained virtually unchanged to date.

The 1906 Act required carriers to publish joint and combination rates with other railroads or water carriers. That Act also prohibited railroads from making any refund or rebate or exchanging any privileges or facilities not in accord with the tariff. This was a further modification of the original act which made it unlawful for a carrier to charge more or less than its published tariff.

RATE STANDARDS

The original act provided for "just and reasonable charges" for transportation of persons or property. That standard remained intact through the 4-R Act. The 4-R Act permitted a carrier to lower rates to "going concern value" even if the lowered rate was less than average variable cost. The 4-R Act also limited the Commission's jurisdiction over what constituted a just and reasonable maximum rate to those areas where the Commission found that the carrier had "market dominance" over the involved service. Market dominance was defined to mean the absence of effective competition. Recently the Commission's interpretation of market dominance has excluded any rates which are less than 160 percent of revenue to variable cost.

The relationship of rates to revenue needs of the carrier was introduced into the rate-making process in the 1920 Act. The 1920 Act directed the Commission to establish rates so that carriers as a whole (or as a whole in each rate group) would under honest, efficient and economical management and reasonable expenditures, earn an aggregate annual net railway income equal to a fair return on aggregate values of railroad property. The onset of the depression in the early 30's led to legislation which changed this standard. Specifically, the Emergency Transportation Act of 1933 changed the standard to "the need for adequate and efficient service at lowest cost consistent with furnishing such service and the need of revenue sufficient to enable carriers to provide such service." The imposition of this new standard with respect to revenue needs began a process which permitted the Commission to give revenue needs a very low priority in the matter of rate-making. The 4-R Act changed this provision of law to a standard for revenue need closer to the standard in the 1920 Act. The Commission was directed to determine an "adequate rate of return" for the railroad industry. (The Commission has found under this last provision that an adequate rate of return is somewhat above 11 percent—compared to the reality of less than 2 percent for the industry at present.)

Umbrella rate-making—whereby the Commission would hold the level of rates up for one mode in order to protect another mode—grew during the 30's, 40's, and 50's. In 1958 the law was amended to prohibit umbrella rate-making by requiring that "rates shall not be held up to prohibit traffic of any other mode, giving due consideration to the National Transportation Policy". Unfortunately, the restriction of giving due consideration to the National Transportation Policy meant that umbrella rate-making continued even though the Commission was less adamant in following that practice. The 4-R Act put an end to umbrella rate-making.

Preference to one shipper over another was prohibited from the time of the original Act. Many distortions in rates have evolved as a result of the anti-discrimination requirements, i.e., a movement toward equalization of rates regardless of the economic and physical circumstances.

The long- and short-haul discrimination provision contained in the original Act was further strengthened in 1910 to apply whenever rail routes paralleled water routes.

The 4-R Act began to move away from rigidity in rates caused by anti-discrimination requirements when the seasonal rates provision was enacted. Specifically, the Commission was permitted to establish seasonal, regional, or peak demand rates for rail services.

Intrastate rates were not regulated by the original act. The 1920 Act, however, gave the Commission authority over intrastate rates which resulted in undue or unreasonable advantage, preference or prejudice between persons or localities in intrastate commerce or presented an undue burden on interstate commerce.

Free or reduced rates for the government were contained in the original act, and in 1942 reduced dates were permitted for transportation of property in case of earthquake, flood, fire, famine, epidemic, pestilence, or other disaster. In 1957 the law was changed to require the publication of government rates unless disclosure would endanger national security.

The 4-R Act permitted rate differentiation in other categories as well as seasonal and peak demand categories. A separate rate was permitted for separate and distinct services. A special rate was permitted to encourage capital investment in equipment, e.g., Big John grain hoppers.

RATE PROCEDURES

The original Act in 1887 provided for a complaint procedure before the Commission. Any person, organization, or body politic complaining of anything done or omitted to be done by any common carrier was allowed to petition the Commission for redress. Once the complaint was filed, the Commission notified the carrier, which could right the wrong. If the carrier corrected the wrong, that was the end of the matter. If the carrier did not, the Commission had a duty to investigate the complaint. No complaint could be dismissed because of the absence of direct damage to a complainant. In 1910, the complaint procedure was broadened to permit a complaint to be brought by another common carrier.

In 1906, the law was amended to permit the Commission to prescribe just and reasonable rates, if necessary, and to permit the Com-

mission to issue a cease and desist order against any carrier. The Commission was also permitted to prescribe divisions of joint rates.

In 1910, suspension and investigation power was given to the Commission. Upon its own motion or a complaint pending a hearing, the ICC was permitted to suspend the operation of a rate schedule or defer its use for up to 120 days; and if the hearing could not be completed within 120 days, the suspension could be extended an additional six months. The 1920 Act cut back suspensions in that an extension of time was limited to 30 days, rather than six months. However, in 1927, the period of time during which the Commission could suspend a proposed rate increased from 120 days to seven months with no further extension. Not until the 4R Act was the suspension power reduced. The 4R Act provided that the Commission may not suspend an increase on the grounds that it exceeds a just and reasonable maximum if the carrier does not have market dominance. In addition, there was a 7 percent zone of freedom permitted for a two-year period following January 1, 1976.

The 4R Act also placed the burden of proof on the complainant to establish that the proposed rate change will cause substantial injury to the complainant and that it is likely that the complainant will prevail on the merits. However, the carrier still has the burden of proof to show that the proposed rate is just and reasonable.

Collective ratemaking—the practice of carriers getting together to establish rates—was a custom long followed and not prohibited by the Interstate Commerce Act. In the mid-1940's, the Supreme Court found the practice to violate the antitrust laws. As a result of that decision, the Reed Bullwinkle Act was passed (over President Truman's veto) placing a duty on the Commission to approve agreements between carriers if it finds them to be in the furtherance of national transportation policy. Once the Commission approved a rate agreement—which it did readily—the carriers were not subject to antitrust law violations. In the 4-R Act, permissible rate bureau activity was slightly narrowed. Railroads were required to apply to the Commission for approval of rate bureau agreements. The Commission was given broad authority to investigate such agreements and required to review such agreements every three years.

FREIGHT CAR JURISDICTION

In 1906, the original Act was amended to place upon carriers the duty to furnish freight cars. In 1917, this duty was further defined by making certain that car service included movement, distribution, exchange, interchange, and return of cars. Also, every carrier had to establish, observe, and enforce just and reasonable rules and practices with respect to car service, and failure to do so was made unlawful.

The 1917 Act also permitted the Commission to establish reasonable rules, practices, and regulations with respect to car service, including classification of cars, compensation to be paid for the use of non-owned cars, and penalties for non-observance of the rules.

It was not until 1965 that the law was changed to require that the Commission in fixing such compensation for the use of freight cars should give consideration to the national level of ownership of such type of car and determine whether such compensation should be com-

puted solely on the basis of ownership expense or whether it should include an incentive element of compensation. This latter provision led the Commission to establish the incentive per diem car hire pr[illegible]on.

The 4–R Act further modified the Commission's role in determining car hire charges by requiring that basic per diem charges be fixed on basis of car ownership costs. This has resulted in per diem charges being adjusted to more adequately reflect the cost of the car.

The 1917 Act also gave the Commission the power to take immediate action in an emergency with respect to supply of cars, with or without hearing or notice, either upon complaint or its own motion to suspend operation of any or all regulations with respect to car service for such time as determined by the Commission, and to make such just and reasonable directions to best serve the interest of the public and commerce of the people. The Commission was given the authority to issue directions as to car service through agents. Failure of a carrier to comply with direct order with respect to car service was made subject to penalties. The 1940 Act made it unlawful for anyone to bribe anybody else in order to obtain cars.

The 1920 Act made direct reference to coal cars. Specifically, the law made it a duty of every carrier to make just and reasonable distribution of coal cars among coal mines served by it whether located on its lines or customarily dependent upon it for car supply. The 4–R Act somewhat modified this requirement by permitting a distinction to be made between unit trains and non-unit train shipments.

TRACKAGE JURISDICTION

The 1920 Act—which in many ways was an attempt to make the railroad industry into an effective cartel—prohibited any carrier from extending or constructing new lines unless it first obtained from the Commission a certificate of present or future public convenience and necessity. The 1940 Act made it clear that the Act permitted contracts between carriers without Commission approval for joint ownership or joint use of spur, industrial team, switching or sidetracks. The 4–R Act changes the substantive test from whether "the present and future public convenience and necessity require" to "the present and future public convenience and necessity require or will be enhanced" by such construction or operation. It also deleted the authority of the Commission to require a carrier to extend its line or provide safe and adequate facilities. It also specifically exempted from regulation the "acquisition" as well as the construction and operation of spur, industrial team, switching or sidetracks.

Abandonment of track was brought under Commission jurisdiction by the 1920 Act. Specifically it required a certificate from the Commission that the present or future public convenience and necessity permitted such an abandonment. The 4–R Act sets specific time frames in which the Commission must consider an abandonment of line or discontinuance of service and established the branch line subsidy program which, in effect, permits intervention by a state to directly or indirectly subsidize a line in lieu of abandonment.

Switch connections were required by the 1906 Act by requiring a common carrier to provide upon reasonable terms a switch connection

or private sidetrack where such is reasonably practical and will furnish sufficient business to justify it. The common carrier is also required to furnish cars without discrimination, and refusal to do either gives the Commission jurisdiction over a complaint and the power to order that such switch be installed.

Joint use of facilities was provided for under the 1920 Act. Whenever the Commission was of the opinion, after a hearing, that acquisition of control of one carrier by another, not involving consolidation of such carriers into a single system, was in the public interest, it could approve such control if consistent with its plan for creation of a limited number of balanced railroad systems. The Emergency Transportation Act of 1933 modified the standard to make joint use lawful, with the authorization of the Commission, for any carrier, or two or more carriers jointly, to lease or contract to operate the properties or any part thereof of another, whether or not it was consistent with the Commission's plan for creation of a limited number of balanced railroad systems.

The 1940 Act, in modifying the merger standards, also made it possible for the Commission to stipulate conditions for the approval of joint use. The 4–R Act modified those conditions by expanding the notice and comment procedures and labor protection standards. It also established time frames for applications and Commission action.

Terminal areas, permitting interchange of traffic, were regulated under the original 1887 Act. However, no carrier was required to give the use of its tracks to a competing carrier. The 1920 Act empowered the Commission to require a carrier to permit another carrier to use its terminal facilities upon payment of just and reasonable compensation.

RELATIONSHIPS AMONG RAILROADS

Emergency routing powers were given to the Commission by the 1917 Act. The Commission was given the power to take immediate action in emergency with respect to supply of cars. In 1974 it was made explicit that the Commission could authorize or direct one railroad to operate properties of another if essential services were threatened to be terminated. This directed service power, which is limited to 240 days, is presently being used by the Commission with respect to the Rock Island. The Commission's attempts to use its more general emergency service powers were not successful in the Rock Island case since the court held the authority 49 U.S.C. 11123 was not broad enough to permit the Commission to direct other carriers to provide service on parts of the Rock Island. Consequently, the Commission used its 1974 authority under 49 U.S.C. 11125 but with the concurrence of carriers who planned to acquire parts of the Rock Island that it should be without compensation. Normally, under 49 U.S.C. 1112. the Commission has to pay the carrier providing the service.

Joint routes and rates were first required under the 1906 Act which gave the carrier the duty to furnish transportation and establish through routes having just and reasonable rates. Where the carriers could not agree the Commission was given authority to establish through routes and joint rates and to fix the division of revenue between the carriers involved. The 1910 Act added the requirement

that the carriers had a duty to provide reasonable facilities for operating through routes and reasonable rules for exchange of cars.

The 1920 Act provided that divisions could not unduly prefer or prejudice any participating carrier. In 1940 the duty to establish through routes with connecting common carriers by water was added.

Cancellation of joint routes was made more difficult by the 1940 Act by placing the burden of proof on the carrier proposing such cancellation to show that it was consistent with the public interest. The 4–R Act relaxed that burden somewhat by mandating that the Commission in considering proposed cancellations of through routes should compare distance, time, and expense over involved routes and recognize the reduction in energy consumption in overall impact on shippers and carriers affected.

The Commission was given authority to prescribe just and reasonable rates with respect to joint routes and rates in 1910. All orders of the Commission under this provision were originally limited to two years, but the 1920 Act and the 1940 Act expanded the Commission's power in this area by permitting it to establish through routes and prescribe joint rates if it found that the through route proposed is needed.

Interchange discrimination was prohibited from 1887, but under the original act no carrier was required to give the use of its tracks to a competing carrier. The 1920 Act permitted the Commission to require one carrier to use another carrier's facilities upon payment of just and reasonable compensation.

The Commission was given power over consolidations and mergers in the 1920 Act, and the standard for approval was if such consolidation was consistent with the plan to create a limited number of balanced systems. The 1940 Act had introduced certain conditions for approval of mergers. Those conditions were to be added when the Commission found them to be in the public interest. The Commission found labor protection to be in the public interest as well as conditions designed to benefit the economic interests of carriers not involved in the merger or consolidation. The 4-R Act put time limits on the Commission in its consideration of merger consolidation cases. It also codified the need for labor protection and discouraged inclusion of weak carriers as conditions for mergers.

The 4-R Act also established an expedited merger procedure in which the Secretary of Transportation was to play a promotional role.[1] The regulations prescribed by the Department of Transportation in order to get the Secretary involved in this expedited merger procedure tend to present such a burden that the expedited procedure has not been used.

Pooling proceeds between carriers was prohibited under the 1887 Act. The 1920 Act permitted the Commission to approve pooling of freight or proceeds of other carriers. The 1940 Act extended the Commission's authority to approve pooling between railroads and water carriers.

REVENUE DIVISIONS

Division of revenues was originally left to the carriers themselves. In the 1910 Act, the Commission was given the authority to prescribe just and reasonable divisions when the carriers failed to agree. The

4–R Act established new time frames for the conduct of proceedings before the Commission for the adjustment of divisions.

The problem with joint rates centers around the determination of fair and equitable revenue divisions. A division of a joint rate is the share of the revenue each railroad receives for its portion of the through route. Clearly, the optimal method for determining divisions is by the voluntary agreement of the railroads. The ICC has had authority since 1906 to prescribe divisions of joint rates when carriers are unable to agree among themselves.

The Transportation Act of 1920 gave the ICC the authority to set divisions on its own initiative, as well as upon complaint. The provision for intervention, even in the absence of a disagreement among carriers, recognized that the public interest in the division of rates takes precedence over private contractual rights.

Under the 1920 Act, the ICC was authorized to consider not only what is just, reasonable and equitable between carriers, but also the financial needs of particular carriers. Divisions became one means for distributing earnings to weaker roads considered essential to the rail system.

In 1922, the Commission granted the New England railroads a blanket increase in freight divisions with all connecting lines due to the special operating handicaps and serious financial difficulties of the New England railroads. In 1923, the Supreme Court affirmed the ICC ruling by holding that the Commission had the power to grant a larger division, if the financial need of the weaker roads and the public interest required it, providing that an adequate share was left to the other carrier to avoid a "confiscatory result". This was the first time the Commission prescribed divisions on a territorial basis. By 1922, the rate structure was so complex that group divisions were considered a practical necessity.

Regional groupings are used to resolve interterritorial division disputes. These cases apply to all or a major portion of the interterritorial interline traffic, i.e., traffic that is carried by two or more carriers across regional boundaries. Interterritorial divisions cases are enormously complex, lengthy, and costly. In the Official-Southern divisions case (also referred to as the North/South Divisions Case) the revenues, as settled, totaled nearly one-half billion dollars. (The case lasted from 1952 to 1965.)

The 4-R Act ordered the Commission to establish procedures to expedite division cases. Evidentiary proceedings must be completed within one year after a complaint is filed (two years if brought by ICC initiative), and the Commission must act within 270 days after completion of evidentiary proceedings. The statute has a clause allowing the Commission longer if it needs it. Of course, ICC decisions may still be appealed. (Typically, divisions cases used to take from three to ten years to resolve.)

In response to the 4–R Act directive, in 1976 the ICC adopted administrative procedures in order to expedite divisions cases. Carriers participating in a divisions dispute are required to present evidence on several factors but the Commission may use its discretion with regard to the weight it gives to each of these factors (if it considers them at all). The Commission must consider all statutory criteria, but it is not

required to give equal weight to each item or to justify the factors it considers or weights used.

The major objections raised by railroads with respect to the Commission's approach to divisions cases is their substantial reliance on cost based factors, rather than giving adequate consideration to the other statutory criteria, i.e., efficiency, revenue needs, the public interest, and whether a line is an originating, intermediate, or delivery carrier.

In trying to determine an equitable revenue split between the two carriers, each carrier's costs of providing the service has effectively become the Commission's overriding concern.

The Commission has tended to cost out segments of the traffic using Rail Form A. Form A costs are based on historical averages and do not accurately reflect carriers' fully allocated costs. The Commission requires that costing studies be based on Form A, if more reliable methods are not available. Modifications to Form A may be used, but other methods are only acceptable to the extent that they present more accurate cost data.

Ultimately, the joint rates issue is reduced to the century-old battle between the Northeastern and Southern railroads: Are the higher costs of the Northeastern railroads a function of the transportation and economic characteristics of the Northeast or are they a function of carrier productivity? The answer is probably some combination of both reasons. (In the 1930's and 1940's, the situation was reversed. The Northeastern carriers were financially better off than carriers in less industrially developed regions).

CORPORATE REQUIREMENTS

Accounts and reports were required from the carriers under the original act, and the Commission was given the discretion to require all common carriers to conform to a uniform system of accounts. The 4-R Act required the Commission to create a uniform cost and revenue accounting and reporting system for all railroads in lieu of the former discretionary power of the Commission to prescribe a uniform system of accounts. The new accounting system required by the 4-R Act has yet to be implemented. Proposed regulations by the Commission have come under criticism in that they may be requiring information for information's sake.

Railroad securities were brought under the Commission's jurisdiction by the 1920 Act. The Commission continues to have primary jurisdiction in this area although in some instances the Securities and Exchange Commission has concurrent jurisdiction. The 1920 Act also subject interlocking directorates to approval by the Commission.

The commodities clause was added to the act in 1906. Under the commodities clause, it is unlawful for any railroad company to transport interstate any article or commodity, other than timber and products thereof, manufactured, mined, or produced by it or under its authority or in which it has an interest except as may be necessary in the conduct of its business as a common carrier. The original purpose of the commodities clause was to prevent discrimination against non-carrier shippers. The creation of holding companies and subsidiaries has made it possible for railroads to carry such commodities at the same rate charged other shippers.

The discrimination requirement of the original act tended to preclude credit preferences among shippers. The 1920 Act made explicit the fact that the Commission had jurisdiction over the extension of credit. Specifically that act provided that no carrier shall deliver or relinquish possession of freight without payment of charges except under Commission rules.

The Panama Canal Act of 1912 prohibited railroads from owning water carriers and, except for trucking companies grandfathered in by the 1935 Motor Carrier Act, railroads may not own trucking companies.

ICC ORGANIZATION

The original Commission was composed of five members. In 1906 its membership was enlarged to seven. In 1917 its membership was enlarged to nine. In 1920 the Commission membership became eleven members, and continues at that level today although not all Commission positions have been filled.

ICC PROCEDURES

The procedures of the Commission have changed little over time. Basically the Commission may investigate on its own or upon a complaint. Over the years the Commission was given the power to issue orders and to prescribe rates or practices.

BACKGROUND

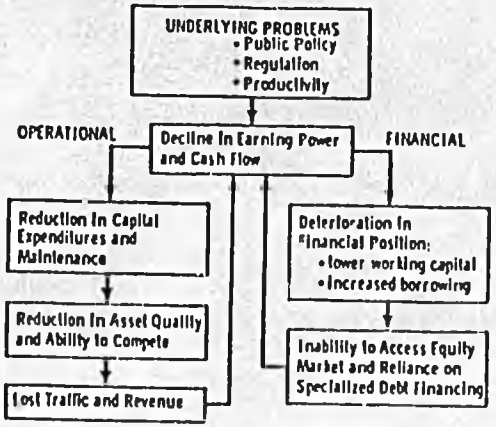
The 4-R Act in Secs. 501 and 901 required the Department of Transportation to report to the Congress on the capital needs of the railroad industry. That report—*A Prospectus for Change in the Freight Railroad Industry*—was submitted to Congress in October of 1978. In 1978 dollars the report concluded that the railroad industry, exclusive of the Long Island Railroad and Conrail, would have a capital shortfall of between $13.1 and $16.1 billion between 1976 and 1985. In current dollars that shortfall is between $16 and $20 billion.

When compared to forecasts prepared by the First National City Bank and the ICC in Ex Parte 271, the DOT projections do not appear unrealistic. The First National City Bank prepared a study in connection with the development of the Final System Plan by USRA. Some of the charts contained in this section of the Background Materials are from the First National City Bank analysis which understates capital needs—as does the DOT Report—because of the unexpected increase in the rate of inflation and interest costs.

All of the analysis done of the railroad industry, either by itself or by government or private sources, has concluded that for the period 1976 through 1985 the industry would have a significant capital shortfall. The simple fact of the matter is that the railroad industry is a capital-intensive industry which for several decades has had inadequate earnings to maintain its plant and facilities at a level necessary to achieve improved services. The following flow chart illustrates how this inadequacy of capital tends to feed upon itself, causing further deterioration of the system:

CHART 3-A

Rail Industry Decline



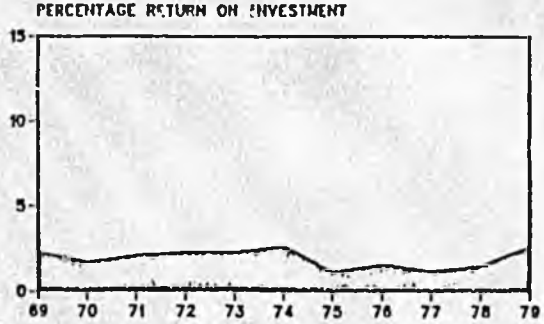
Low earnings and cash flow levels have led railroads to cut back on needed capital expenditures and to reduce maintenance on existing plant facilities and rolling stock. The subsequent reduction in asset quality has resulted in a deterioration in the railroad's ability to offer quality service and compete with other transportation modes. The accompanying loss of profitable traffic has impacted revenues and ultimately earnings, completing the cycle.

On the financial side, due to the insufficient earnings and cash flow, railroads have sought to fund expenditures by drawing down working capital and by increasing the level of debt financing. The result has been a deterioration in both liquidity and capital adequacy. The combination of poor earnings prospects and poor asset quality has effectively closed the equity market to railroads and led to further reliance on specialized debt financing such as equipment trust certificates, at increasing interest costs. The ensuing negative impact on earnings and capital structure have perpetuated the downward financial spiral.

The 4-R Act required the Commission to determine an adequate rate of return for the railroad industry. The Commission has determined that the industry should be achieving an 11 percent rate of return. The following graphs, covering the last decade shows that railroads have consistently been far below that rate of return.

CHART 3-B

RAILWAY RETURN ON NET INVESTMENT HAS BEEN INADEQUATE



NOTE: Rates of return shown above would be lower if adjusted for tax treatment.

Source: Railroad Reports to ICC

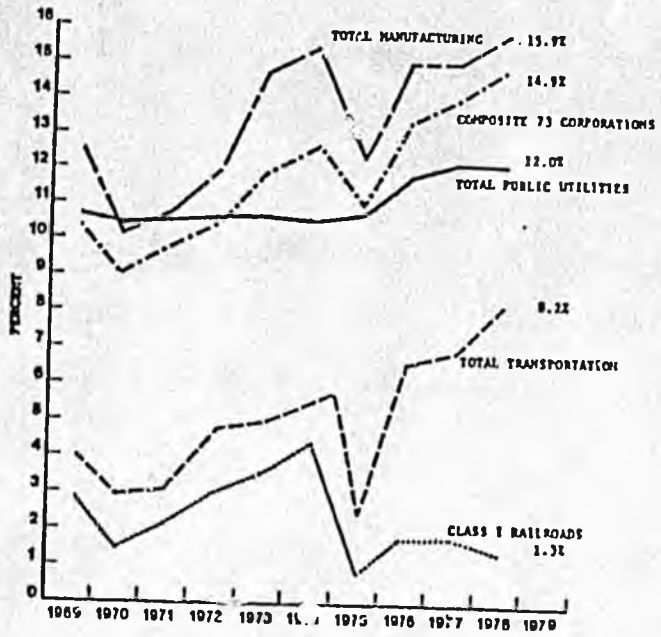
In its analysis First National City Bank noted:

> There is no better measure of overall financial conditions than the rate of return on investment. The low return on investment is the most apparent symptom of rail industry decline. (P. 68, First National City Bank analysis.)

One way to better understand the significance of rail rate of return is to compare it with the rate of return on net worth for leading corporations. The following graph shows that difference:

CHART 3-C

RATE OF RETURN ON NET WORTH
LEADING CORPORATIONS



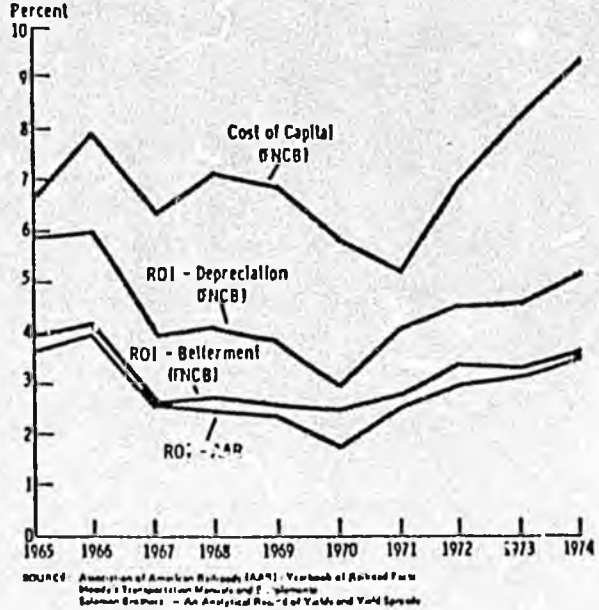
Source: Citibank

It is often argued by some that the rate of return used for the railroad industry is distorted because the industry uses a betterment accounting method which permits expense of certain capital expenditures on track rather than depreciation. Even taking into account that difference, the rate of return for the railroad industry is still dismal. The following chart covering the period 1965 to 1974 shows that there is little difference between the determination of rate of return using the depreciation method or the betterment method.

CHART 3-D

Class I Railroads Rate of Return and Cost of Capital

1965 - 1974



SOURCE: American Association of American Railroads (AAR): Yearbook of Railroad Facts
Moody's Transportation Manuals and Supplements
Salomon Brothers — An Analytical Record of Yields and Yield Spreads

BANKRUPTCIES

The inevitable result of costs exceeding profits is bankruptcy. The railroad industry since 1967 has seen eleven major bankrupteies. The seven major bankrupteies in the Northeast which led to the formation of Conrail have resulted in a direct cost to the government already in excess of $3 billion. That direct cost will become considerably larger once the government settles the litigation involving the valuation of the property taken over by Conrail and Amtrak.

To date it is at best uncertain whether or not that direct federal investment will lead Conrail to become a healthy corporation. Clearly, absent improved business opportunities, Conrail will continue to suffer financial losses.

The Midwest bankrupteies involving the Milwaukee and the Rock Island continue to cost the government money even though one railroad is being liquidated and the other substantially reduced in size.

PRODUCTIVITY AND EFFICIENCY GAINS

In a regulated industry like railroad, both productivity and efficiency are somewhat limited by public policy which is frequently directed towards social and political objectives rather than economic goals. Within this framework of regulatory control, the railroad industry has an exemplary record of productive and efficient operations, particularly when evaluated in light of continuing inflation, and a serious and persistent shortage of capital.

It is in the railroads' best interests to seek productivity gains, and they have done so despite such institutional obstacles as inadequate returns on investment, and regulatory restrictions. Productivity increases have been achieved through abandonment of light-density lines, upgrading of facilities, consolidations, pricing initiatives, and innovative collective bargaining.[1] Ensuing productivity gains have helped restrain rate increases to the level where they have been consistently below escalations in operating costs. (See chart 3-K.)

As an indication of substantial productivity improvements made by the railroads, Chart 3-E shows trends in eight single-factor productivity indicators for the period 1967-1978. Each factor is related to rail freight revenue ton-miles.

As shown in the first two columns, the railroads in recent years have been able to handle more freight traffic with fewer employees working less total hours.

CHART 3-E

SINGLE-FACTOR PODUCTIVITY INDICATORS IN FREIGHT SERVICE

	Freight revenue ton-miles per—								
Year	Employee (millions)	Employee-hour	Average route miles operated in freight service (millions)	Active locomotive (millions)	Serviceable freight car (thousands)	Freight car-mile	Freight train-mile (thousands)	Freight train-hour (thousands)
1967	1.4	339	3.4	42.3	457	24.3	1.2	31.9
1968	1.4	390	3.5	43.2	490	24.7	1.2	33.4
1969	1.5	411	3.6	44.6	512	25.3	1.3	33.7
1970	1.5	416	3.7	44.3	511	25.6	1.3	36.1
1971	1.5	405	3.6	41.9	496	25.3	1.2	35.2
1972	1.5	437	3.7	42.0	527	25.6	1.2	34.4
1973	1.7	496	4.1	44.6	575	27.2	1.3	35.4
1974	1.7	495	4.1	43.5	581	27.7	1.3	35.0
1975	1.6	476	3.7	40.4	533	27.1	1.3	37.5
1976	1.7	512	4.1	42.3	577	27.8	1.3	37.7
1977	1.8	538	4.2	43.2	609	28.1	1.3	38.3
1978	1.9	577	4.5	44.6	640	29.5	2.0	38.5

Source: Railroad reports to the ICC.

The table also reflects similar improvements in traffic density and utilization of equipment. The significant improvement in freightcar utilization is due not only to larger cars, heavier loadings, and faster trains, but also to industry-wide innovations in introducing such operating techniques as unit trains, piggyback trains, run-through trains and systems improvements, such as centralized car location and automated distribution systems.

[1] A 1970 study by the BLS indicated that rail productivity, based on output per employee-hour registered a 12.2 percent gain in 1978 over 1977, the largest increase of any industry included in the study.

The issue of economical service parallels that of productivity in that: (1) it is in the best interest of railroads to increase efficiency—i.e., hold down costs and eliminate waste and redundancy, (2) many of the factors which affect costs (operating and capital) are only partially within the control of railroad management, and (3) within their restrictive environment, railroads have a creditable record of efficiency.

Railroads have an obvious motivation to increase efficiency. Lower costs per unit of service restrain the need for, and level of, rate increases, thereby improving the industry's competitive position. It is in the spirit of efficiency that railroads have rationalized the physical plant, ameliorated restrictive work rules, introduced more automated equipment, and consolidated operations.

In the past several decades, a persistent problem in the railroad industry has been the acceleration of operating costs in the face of diversion of remunerative traffic. Such cost increases are an obstacle to economic efficiency. That the railroads have responded positively is supported by the productivity indicators shown in the preceding table.

Railroad resources are being put to increasingly productive use and costs, where controllable, are being restrained through railroad action. The productivity record of the rail industry is one of significant accomplishment.

CURRENT RAILROAD FINANCES

Despite the modest improvement in railroad earnings indicated by preliminary 1979 financial reports, the fact is the industry's level of profitability remains unquestionably inadequate. There is no evidence that the industry's pervasive revenue need has been alleviated by short-term gains of moderate dimensions.

This is clearly demonstrated by the 1979 rate of return on net investment (ROI) of 2.68 percent which represents a continuation of the persistent low profit levels that have plagued the railroads in recent years. (See Chart 3-B earlier in this Part.) This low ROI is far below any reasonable measure of adequacy, including the 11 percent cost of capital recently proposed by the Commission as essential to viability. The railroad's rate of return has not exceeded 3 percent since 1966.

During the past decade, various major capital need studies (some already referred to) have provided comprehensive analyses of investments that are required to provide a viable rail transportation system.

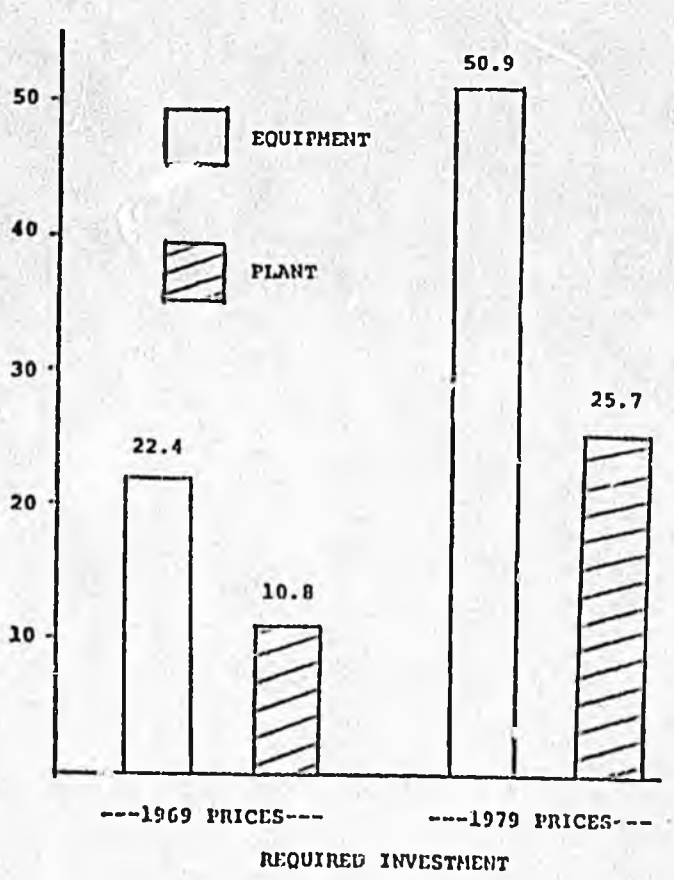
The first study done by industry itself was the 1970 Astro Report. It projected a 10-year investment need of $33.2 billion. When adjusted for inflation by updating to 1979 cost levels, the 10-year needs soar to $76.6 billion.

In 1974, the Astro methodology was used to provide an update of Astro I forecast. These forecasts should be viewed against the fact that the industry spent only $20 billion during the 1969 to 1979 period for capital needs. Chart 3-F and 3-G show the Astro I and Astro II estimates adjusted to reflect inflation.

CHART 3-F

ASTRO I

PROJECTED TEN-YEAR INVESTMENT REQUIREMENTS

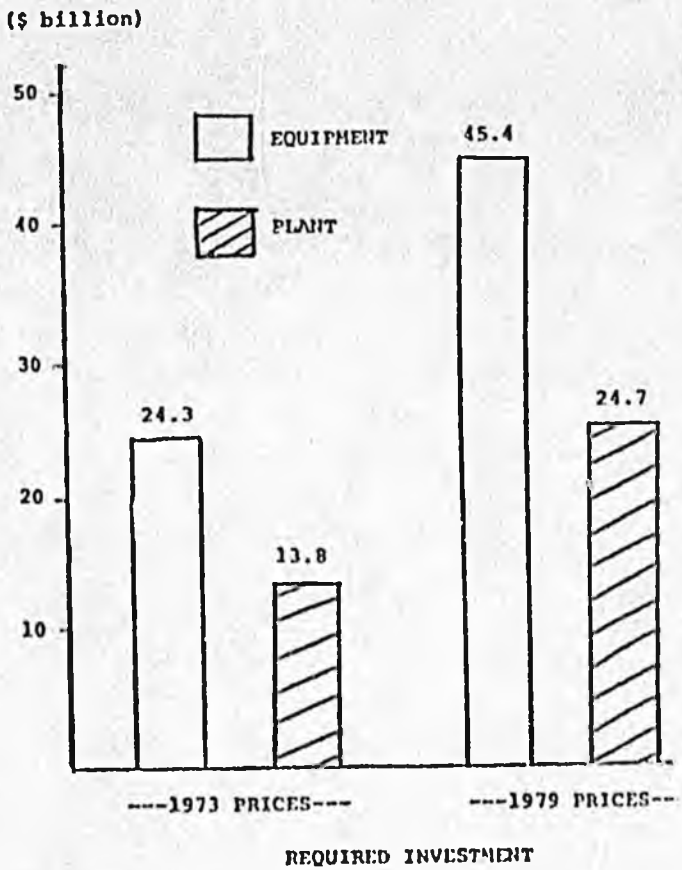


SOURCE: ASTRO I, AAR.

CHART 3-G

ASTRO II

PROJECTED TEN-YEAR INVESTMENT REQUIREMENTS



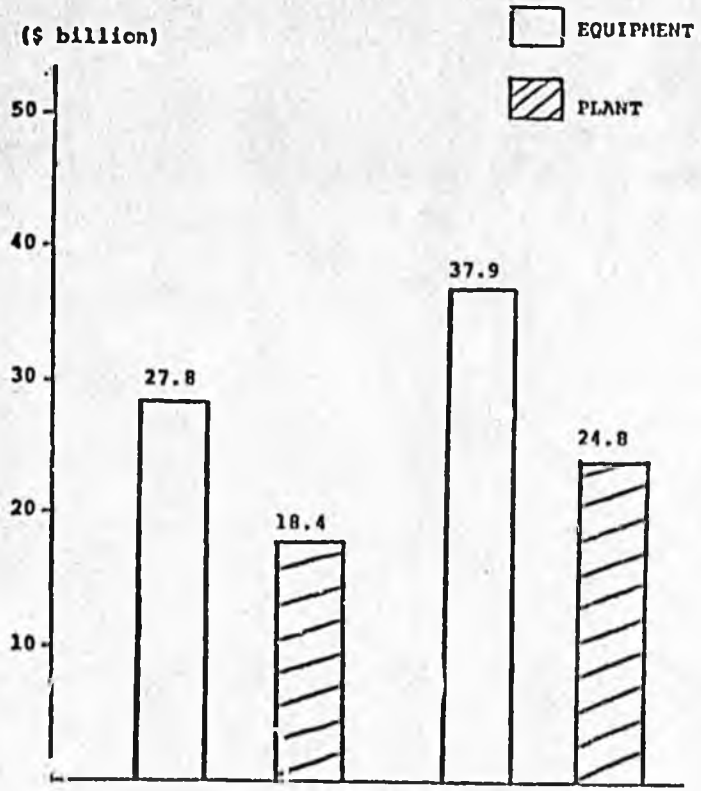
SOURCE: ASTRO II, AAR.

The Interstate Commerce Commission in Ex Parte 271 showed more modest needs than the industry studies but nevertheless they were more than three times greater than the current rate of railroad investment in capital needs. Chart 3-H below shows the ICC capital needs estimate adjusted to 1979 prices:

CHART 3-H

ICC EX PARTE 271 ESTIMATES

OF TEN-YEAR RAIL CAPITAL NEEDS



REQUIRED INVESTMENT

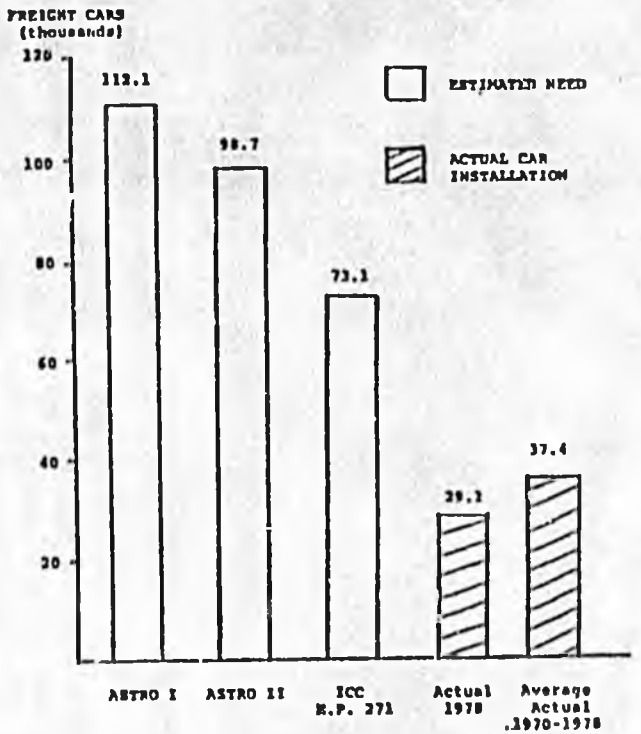
---- 1975 PRICES ---- ---- 1979 PRICES ----

SOURCE: ICC, AAR.

Freight cars and locomotives are by far the largest components of the industry's capital requirements. Chart 3-I shows the estimated freight car installation requirements identified by the Astro studies and the ICC Report. As these figures show, the lowest of these estimates is nearly twice the average installation rate of the years 1970 to 1978.

CHART 3-I

COMPARISON OF REQUIRED AND ACTUAL
ANNUAL FREIGHT CAR FLEET EXPANSION *



* Class I Railroads only.
SOURCE: ASTRO I, ASTRO II, ICC, AAR.

The industry shortfall with respect to needed locomotive installations is even more dramatic. Class I railroads average 931 units per year installed over the 5-year period 1974 to 1978. The lowest of the five study estimates—the Commission's projections—is 74 percent higher than the average rate of installations over that period. The other four estimates are approximately double the current installation rate. Chart 3-J shows these differences:

CHART 3-J

COMPARISON OF ACTUAL LOCOMOTIVE INSTALLATIONS WITH STUDY REQUIREMENTS

Study	Average annual installations indicated	Average annual cost, May 1979 dollars (millions)
1. Astro	2,002	$ 183
2. Astro II	1,978	1,125
3. ICC ex parte 311	1,621	1,049
Actual installations [2]		
1978	1,312	[3]735
1977	997	[3]586
Average, 1974-78	931	[3]550

[1] Includes USRA, FSP projection for Conrail
[2] Excludes Amtrak and Auto-Train. Installations include all locomotives, new and rebuilt, whether acquired by purchase or lease.
[3] Estimated by average new and rebuilt locomotive cost as of May 1979

Succinctly stated, the upkeep and modernization of railroad plant and equipment continues to deteriorate at an alarming rate. The shortfall of money in the railroad industry will become increasingly acute as a result of inflation and higher interest rates. That shortfall either has to be made up from improved performance by the railroad industry or government subsidy. Improved railroad performance will be contingent upon a number of factors, including greater regulatory freedom and the state of the economy generally.

COST INCREASES

The points discussed in preceding sections of Part 3 are graphically borne out by the patterns shown in Chart 3-K. Between 1969 and 1978, rail costs increased 147 percent while the BLS index of rail freight rates increased only 113 percent. The BLS index, which records changes in rail rates, does not capture the volume of traffic moving under those rates. The volume of traffic is, however, incorporated in the revenue per ton mile measurement. Revenue per ton mile shows a much smaller increase; it increased only 76 percent over this same period. That degree of prolonged disparity between cost and revenue would severely impair the financial strength of any industry. Since the rail industry entered this period with limited financial resources, the adverse effects have been exacerbated.

The conclusions to be drawn from this analysis are clear:

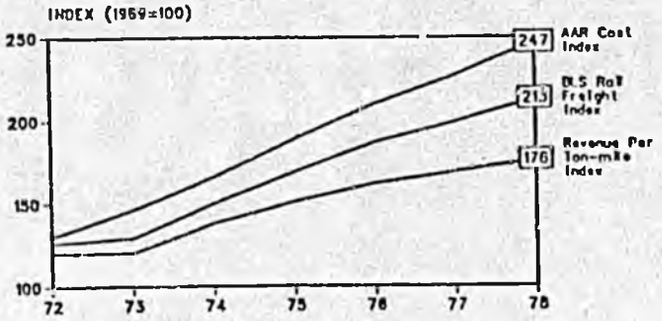
The rail industry is essential to economic growth.

The strength of the rail industry is clearly linked to flexible management response to perennially changing market conditions.

Reduction of the scope and intensity of regulation is essential to improve financial performance of the rail industry.

CHART 3-K

COST INCREASES HAVE OUTPACED RATE INCREASES



Source: Railroad Reports to ICC, Bureau of Labor Statistics, AAR

EFFECTS OF INFLATION ON RAIL EARNINGS

The pernicious effects of inflation have been particularly acute for the rail industry. Chart 3-L shows clearly the inexorable erosion of net return on investment (NROI). When adjusted for the effects of inflation, the 1978 NROI is 62 percent below the 1969 level. Moreover, even on a nominal basis, without recognition of the deteriorated purchasing power of the dollar, the 1978 NROI is still 35 percent below 1969 earnings. This prolonged decline is disturbing to the rail industry and should be alarming to the shipping community served by that industry. As noted previously in this report, the rail industry has maintained consistently high levels of investment throughout this period. The dilution of rail earnings, in terms of purchasing power is also shown in Chart 3-M. 1978 earnings would have to triple to equal the purchasing power of 1969 earnings.

CHART 3-L

RAILWAY REAL (CONSTANT DOLLAR) EARNINGS HAVE DECLINED

(Dollar amounts in millions)

Year	NROI in current dollars	Implicit price deflator for GNP	"Real" NROI
1969	$655	100	$655
1970	486	105	466
1971	595	11[illegible]	519
1972	654	11[illegible]	561
1973	650	127	511
1974	678	136	579
1975	351	147	224
1976	452	150	296
1977	341	163	21[illegible]
1978	427	175	24[illegible]

Source: Railroad reports to the ICC

CHART 3-M

INFLATION HAS DISSIPATED RAILWAY EARNINGS

Year	Income before extraordinary items (millions)	Implicit price deflator for total GNP (1969 = 100)	Income before extraordinary items required to equal purchasing power of 1969 income (millions)
1969	$514.2	100	$514.2
1970	226.6	105	539.9
1971	246.7	111	570.8
1972	318.9	115	591.3
1973	359.3	122	627.3
1974	730.2	134	689.0
1975	144.2	147	755.9
1976	355.0	154	791.9
1977	325.6	163	838.1
1978	306.8	175	900.0

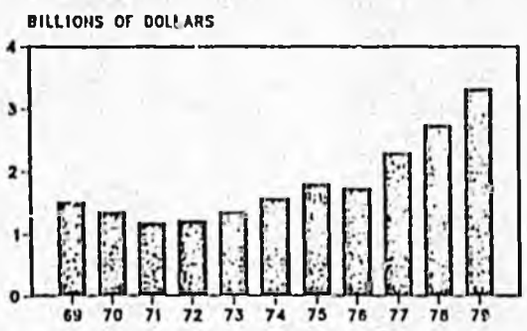
Source: Railroad reports to the ICC.

It seems clear that investment cannot be sustained indefinitely in the context of initially meager and consistently eroding earnings.

The rail industry continues to move more revenue ton-miles each year. However, it is crucial to note that, in terms of 1972 constant dollars, the industry now realizes approximately half the revenue per ton-mile it earned during the Great Depression.

Over the last decade, the railroad has spent progressively more on capital investments (See Chart 3-N). However, that expenditure of funds has been far less than was needed to provide the needed capital investment for the maintenance or improvement of service. It is also important to note that because of low earnings, increasingly greater amounts of the money necessary for the capital investment have come from outside financing. Chart 3-O illustrates the greater dependence

ANNUAL RAILWAY CAPITAL INVESTMENT HAS INCREASED STEADILY

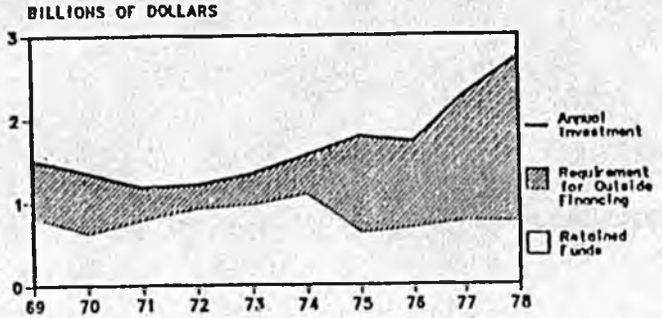


Source: Railroad reports to ICC.

upon outside financing and Chart 3-P shows how retained funds have been a smaller and smaller percentage of annual capital investm Over the long run, this fact alone will assure a continued decline ... the railroad industry.

CHART 3-O

RELIANCE ON OUTSIDE FINANCING HAS INCREASED



•Represents income before extraordinary items, plus deferred taxes and depreciation and retirement charges, less cash dividends and equity in undistributed earnings of affiliated companies.

Source: Railroad Reports to ICC

CHART 3-P

RAILROAD RELIANCE ON OUTSIDE FINANCING HAS INCREASED

Year	Total investment (millions)	Retained funds[1] (millions)	Retained funds as percent of total investment
1969	$1,509.4	$815.6	54.0
1970	1,351.4	618.0	45.7
1971	1,377.6	784.1	56.5
1972	1,215.6	923.1	75.9
1973	1,342.1	964.1	71.8
1974	1,565.4	1,090.8	69.7
1975	1,789.7	621.2	34.3
1976	1,728.7	682.6	39.7
1977	2,290.4	767.8	33.6
1978	2,738.2	769.8	27.4

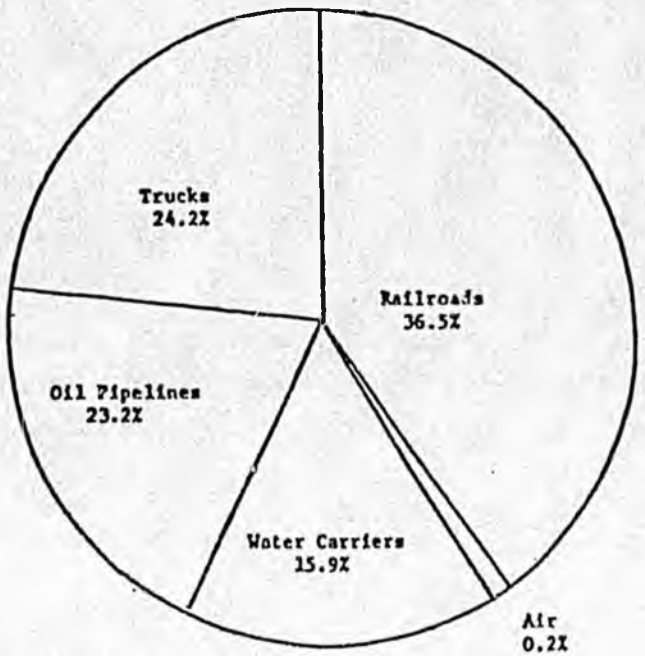
[1] Represents income before extraordinary items, plus deferred taxes and depreciation and retirement charges, less cash dividends and equity in undistributed earnings of affiliated companies.

Source: Railroad reports to the ICC.

PART 4—THE RAILROAD MARKET AND PRICING

In 1979, Class I railroads in the United States generated $25.7 billion in operating revenue, equaling 1.1 percent of the Gross National Product. The railroads handled 927 billion ton-miles of freight in 1979, 36.5 per cent of the nation's total freight traffic. The nation's total freight traffic is divided by mode on a ton-mile basis as follows:

Intercity Ton-Miles



While the railroads' share of intercity ton-miles continues to be impressive, it nevertheless is about half of what it was in 1917. For example, between 1917 and 1977, the economy (real GNP) was growing 185 per cent. Industrial production during that time increased 250 per cent and tons of intercity freight increased 91 per cent. The railroads, however, carried 9 per cent fewer tons in 1977 than they did in 1917.

In absolute terms (the number of tons of freight picked up regardless of distance travelled) trucks now carry almost 50 per cent more tonnage than the railroads. In 1917, railroads were hauling almost three times as much tonnage as the motor carriers.

Ton-mile performance data (1 ton-mile is equivalent to one ton carried one mile) which reflect the distance travelled as well as tonnage carried tell basically the same story. With real GNP growing 185 per

cent and total intercity ton miles by 129 per cent between 1947 and 1977, truck traffic soared 5½ times, pipeline traffic increased by 433 per cent, and barge lines moved eight times more. From the increased traffic available, railroads were able to increase their ton-miles by only 25 per cent. Trucks increased their ton-miles by 450 per cent, oil pipelines by 433 percent, and inland barge by 700 per cent. Thus, in an economy that has almost tripled in size during the last 30 years, America's railroads have seen their tonnage carried fall by nearly 10 per cent and their ton-miles of freight moved increased by less than 1 per cent per year.

The railroads decline in market share seems to cut across almost all areas of freight transportation. For example, for the transport of machinery, except electrical and industrial, railroads hauled 52 per cent of ton-miles in 1963, but only 38 per cent in 1972. With basic textiles and leather products, railroads hauled 25 per cent in 1963, but only 16 per cent in 1972. For drugs, paints, and other chemical products, railroads hauled 62 per cent of the ton-miles in 1963, but only 44 per cent in 1972. For meat and dairy products, the rail ton-mile haul in 1963 was 47 per cent and only 28 per cent in 1972. For fabricated metal products, rail hauled 41 per cent in 1963 and only 23 per cent in 1972. Those declines taken from the Census of Transportation of 1963 and 1972, are repeated in almost every commodity group.

The decline has continued since 1972 and can best be seen by looking at traffic once very dependent upon the rail. For example, railroads no longer dominate grain traffic. In 1973, 58 per cent of the grain sold originated on rail. In 1974, that percentage was 62 per cent, but it dropped to 47 per cent in 1975; 49 per cent in 1976 and down to 43 per cent in 1977.

Fresh fruit and vegetable traffic which went 31 per cent by rail in 1970 was only 11 per cent by rail in 1977.

The reasons for the decline in rail traffice are primarily caused by three factors:

The interdependence of the railroad system whereby service by financially strong carriers is adversely affected by dependence on financially weak carriers;

Inflexible pricing ability resulting from regulation, thereby making it difficult to be price competitive in order to keep or retain traffic; and

A shortage of capital, previously discussed in part 3.

RAILROAD INTERDEPENDENCE

The top 20 railroads in the country account for over 92 per cent of the revenue going into the railroad industry. The top six railroads account for over half of the revenue in the industry. Chart 4-A shows the ranking of Class I carriers by freight revenue for 1978.

CHART 4-A

RANKING OF CLASS I CARRIERS BY REVENUE

[Class I carriers, 1978]

Carrier	Freight revenue (thousands)	Percent of total	Cumulative percentage
CR	$2,812,500	13.90	13.90
BN	1,912,480	9.45	23.35
SP	1,616,085	7.99	31.34
AT&SF	1,491,298	7.37	38.71
UP	1,465,557	7.24	45.95
MP	1,160,083	5.73	51.68
SOU Sys	1,120,735	5.54	57.22
N & W	959,040	4.74	61.96
SCL	881,002	4.35	66.31
L & N	802,559	3.97	70.28
B & O	792,569	3.92	74
ICG	688,215	3.40	77
C & O	636,056	3.14	80.74
CNW	583,388	2.88	83.62
CMSTP & P	395,447	1.95	85.57
SLSF	375,992	1.86	87.43
CRI & P	365,249	1.81	89.24
SOO	245,559	1.21	90.45
SLSW	223,230	1.11	91.56
D & RGW	211,301	1.05	92.61
Top 20	18,741,345	92.61	
Others	1,494,720	7.39	7.39
Total	20,236,065	100.00	100.00

Source: Railroad reports to the ICC.

ConRail, which heads the list of carriers, accounting for nearly 14 per cent of the total revenue, is hardly a healthy carrier. It was formed in April of 1976, out of the estates of six bankrupt railroads in the Northeast. Because railroads depend upon one another in order to either receive freight for delivery or transfer freight for delivery, ConRail's performance affects every other railroad. When ConRail's share of the total rail business is added to the share of the total rail business handled by other bankrupt or financially weak carriers, over 30 per cent of the "rail business" is being handled by financially weak rail carriers. This adversely affects all rail carriers because about 70 per cent of all rail traffic is interchanged between two or more railroads. Chart 4–B shows the extent of the interdependence within the railroad industry.

CHART 4-B

RAILROADS ARE AN INTERDEPENDENT INDUSTRY

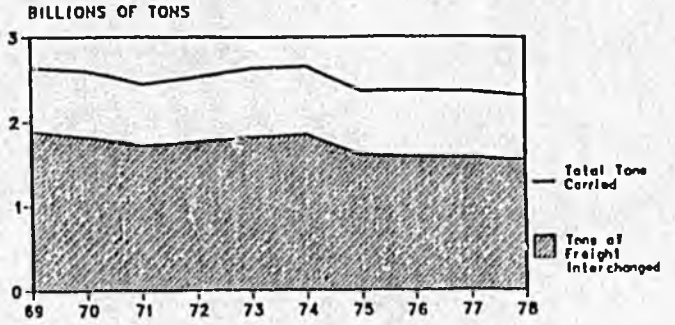
Year	Tons of freight interchanged (thousands)	Total tons carried (thousands)	Interchanged tonnage as a percent of total
1969	1,891,897	2,632,512	71.9
1970	1,878,636	2,600,324	70.2
1971	1,710,275	2,442,758	70.3
1972	1,767,576	2,527,556	69.9
1973	1,822,241	2,632,299	69.2
1974	1,856,572	2,652,010	70.0
1975	1,606,429	2,357,849	68.1
1976	1,590,825	2,369,247	67.1
1977	1,578,500	2,352,475	67.1
1978	1,555,753	2,310,103	67.3

Source: Railroad reports to the ICC.

Chart 4–C illustrates the interdependence of railroads as well as the decline in total tons carried by railroads.

CHART 4-C

RAILROADS ARE AN INTERDEPENDENT INDUSTRY



Source: ICC, AAR

The slight decline in the per cent of interchange between carriers is accounted for by the consolidation of six bankrupt carriers in ConRail and the per cent of interchange can be expected to slightly decline if railroads merge into fewer companies. Nevertheless, railroads will continue to be interdependent. This interdependence will mean that service will be no better than the quality of service offered by the weakest carrier in the interchange.

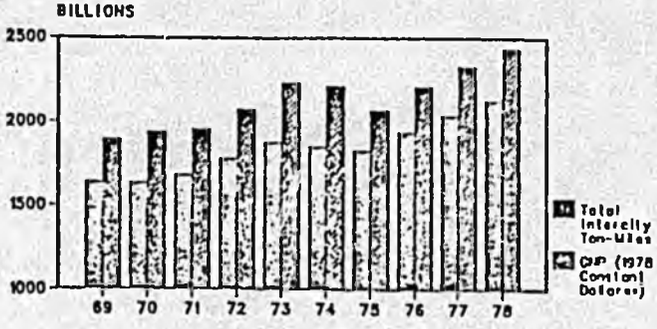
THE EFFECT OF RAILROAD RATE REGULATION

Transportation is a derived demand. In other words, transportation needs tend to increase roughly in the same proportion as the Gross National Product. Chart 4–D shows this relationship.

The demand for railroad service has lagged behind transportation demand and appears to be lagging further and further behind. Chart 4-E shows a continual decline in railroad demand as compared to total transportation demand over the last ten years. The only exception has been [illegible]ing the oil crisis of 1973-1974.

CHART 4-D

TRANSPORTATION IS A DERIVED DEMAND



*Deflated by use of GNP implicit price deflator.

Source: Department of Commerce, Railroad Reports to ICC

CHART 4-E

RAILROAD DEMAND HAS LAGGED BEHIND TRANSPORT DEMAND

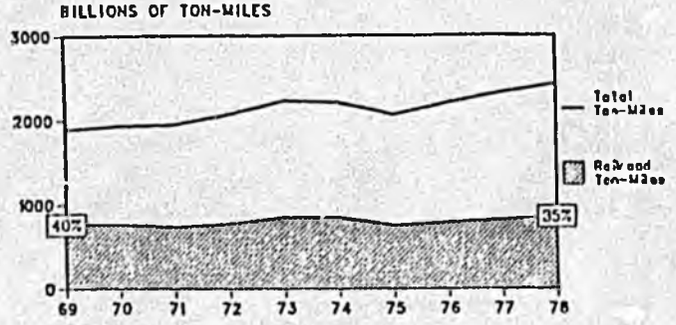
Year	Total intercity ton-miles (billions)	Railroad ton-miles (billions)	Railroad tons (millions)
1969	1,895	768	1,073
1970	1,936	765	1,085
1971	1,954	740	1,091
1972	2,073	777	1,148
1973	2,232	852	1,237
1974	2,232	851	1,231
1975	2,066	754	1,095
1976	2,209	794	1,107
1977	2,311	826	1,150
1978	2,417	858	1,189
Index			
1969	100	100	100
1970	102	100	101
1971	103	96	94
1972	109	101	98
1973	118	111	104
1974	117	111	104
1975	109	98	95
1976	117	103	96
1977	122	108	95
1978	129	112	94
Average annual change	3.7	1.1	(0.7)

Source: Railroad reports to the ICC and Transportation Association of America.

Chart 4-F graphically shows the lack of growth in rail ton-miles. As a matter of fact, the railroads' share of ton-miles has dropped from 40 per cent in 1969 to 35 per cent in 1978.

CHART 4-F

THE RAIL SHARE OF TOTAL INTERCITY FREIGHT TRAFFIC HAS DECREASED



Source: Railroad Reports to ICC

The degree to which railroads are regulated adversely affects their ability to compete with other modes of transportation. About 2/10's of one per cent of the traffic on the Great Lakes is regulated, 3.7 per cent of the traffic using domestic deep sea ports is regulated; 16.3 per cent of the river and canal traffic is regulated; 44 per cent of truck ton-miles is regulated; 84 per cent of pipeline ton-miles are regulated; and 100 per cent of railroad ton-miles are regulated. Needless to say, the extent of regulation over rails is greater than over any other mode of transportation. Rate regulation has significantly weakened the railroads' ability to be price competitive in capturing or retaining traffic.

Before the enactment of the 4-R Act in 1976, every shipper could file a complaint with the Commission that a rate was not "just and reasonable." Whether or not the Commission upheld his complaint, the shipper was able to almost completely thwart individual rate increases and because of this, there was a natural reluctance by railroads to drop prices in order to meet competition. The 4-R Act attempted to alleviate the pervasive chilling effect that rate regulation had on railroad pricing responsiveness in competitive markets. It did so by preserving rate regulation only where the rail carrier was market dominant. In 1977, the Interstate Commerce Commission announced three standards to be used in market dominance determinations:

Revenue to variable cost ratio test;
70 per cent rail market share test; and
Substantial shipper investment in rail related facilities.

This initial market dominance test did little to free up pricing on a movement-by-movement basis because from 45 to 97 per cent of the representative commodities making up the bulk of railroad business fell within the area of regulation. Chart 4-G shows how specific commodities fared under the Commission's original test.

CHART 4–G

ESTIMATED PERCENTAGE OF RAIL MOVEMENTS EXCEEDING MARKET DOMINANCE CRITERIA, 1977[1]

Representative commodity[2]	Market share >.70 percent[3]	Revenue/cost >1.6[4]	Substantial investment test[5]	Range of commodities susceptible to market dominance[6]
Wheat	77	43	12	77-100
Fresh vegetables	24	----	----	24-25
Iron ore	68	58	55	68-100
Bituminous coal	55	22	25	55-100
Construction aggregates	22	6	13	22-41
Industrial sand	22	21	4	22-47
Wheat milling products	24	7	15	24-46
Canned vegetables and fruit	24	7	3	24-34
Wood chips	45	8	----	45-53
Lumber	45	26	1	45-72
Pulpboard	74	28	22	74-100
Organic chemicals	31	51	83	83-100
Petroleum refinery products	6	44	85	85-100
Cement	41	24	20	41-85
Coke	11	17	30	30-58
Manufactured iron and steel	58	58	----	58-100
Auto parts	82	52	----	82-100
Iron scrap	84	31	6	84-100
Total commodities	45	27	25	45-97

[1] This analysis is taken from the report on the "Impact of the 4–R Act Railroad Rate-making Provisions" done by the ICC in 1977. Revenue/cost ratios at 1977 levels are from the report of A. T. Kearney for the ICC, "A study to perform an in-depth analysis of market dominance and its relationship to other provisions of the 4–R Act," April 1979.

[2] The major commodities used in this comparison are representative of the commodity groups reported in the weekly railroad reports—the CS54. These commodities represent approximately 53 percent of all rail tonnage moved. (From 1977 5-percent waybill statistics.)

[3] This market share analysis is based on the 1972 Census of Transportation augmented by a special study done for DOT by Jack Faucett Associates to include both commodities. The market share test in the market dominance category is based solely on intercity freight tonnage moved.

[4] According to Section 202 of the 4–R Act, rail movements with revenue/cost ratio exceeding 1.6 are subject to the Market Dominance provision.

[5] The substantial investment test performed by A. T. Kearney was based upon a shipper receiving loads in private cars and receiving multiple car shipments (greater than 5). This test is an arbitrary estimate of substantial investment by a shipper and may, for example, understate investment for manufactured iron and steel products and auto parts.

[6] The range in percentage of traffic subject to market dominance was determined for the 3 individual market dominance tests. For example, the upper and lower bound for wheat traffic is from 77 percent (from market share test assuming all traffic failing the revenue/cost and substantial investment test is included, i.e. the 77 percent) to 100 percent (77 percent market share test) plus 43 percent (revenue cost test) plus 12 percent (substantial investment test) equals 100 plus percent.

Chart 4–H shows the results of market dominance cases from 1976 through 1979. Of the 48 cases brought, 21 were cases in which the Commission permitted suspension of rates during the adjudication of the case.

CHART 4–H

RESULTS OF MARKET DOMINANCE CASES (1976–79)

Commodity	Suspensions				No suspensions			
	Number of cases	Number of cases ruling— Market share test	Revenue/cost test	Sub. inv. test	Number of cases	Number of cases ruling— Market share test	Revenue/cost test	Number of cases
Chemicals	5	5	5	5	3	2	2	---- 1
Coal	6	5	4	3	13	8	2	---- 6
General merchandise	4	3	1	1	7	5	2	----
Minerals and ores	2	2	1	----	1	1	1	----
Iron and steel	2	1	1	1	----	----	----	----
Other	2	2	----	----	3	3	----	----
Total	21	18	12	[1]3	27	19	7	6

	Suspended[1] (percent)	Not suspended (percent)
Market share test	45	59
Revenue/cost test	30	22
Substandard investment test	25	19

[1] This column refers to the percentage of each particular market dominance test to the total number of tests applied in all the cases. For example, in the 21 cases in which rates were suspended, 40 different market dominance tests were used to protect the rates in question. Of these 40 tests, 18 (45 percent) were of the market share test, 12 (30 percent) were the revenue/cost test, and 10 (25 percent) were the substantial investment test.

Not only was the Commission's original market dominance test only a slight relaxation in rate regulation, but also the Commission's suspension power continued to further thwart ratemaking on an individual commodity or movement basis. The Commission, once a complaint has been filed or on its own motion, can investigate a rate and, during its investigation, it can suspend the use of that rate. Both the investigation process and the suspension process have tended to discourage flexible price adjustments. This lack of pricing flexibility and selectivity has undoubtedly contributed to the railroad's inability to price competitively, while at the same time assuring an inadequate return on investment.

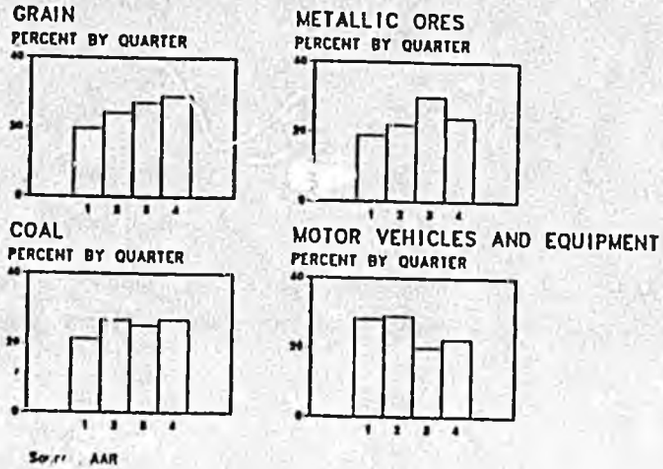
THE NEED FOR FLEXIBLE PRICING

As shown in Chart 4–I, demand for rail traffic is affected not only by competition from other modes, but also by market fluctuations and seasonality.

The demand fluctuations between commodities vary from year to year as well as on a seasonal basis. The year to year fluctuations of railroad demand among commodities simply shows that we have a dynamic economy. No harm would come from this phenomenon were it not for the fact that railroad rates, being completely regulated, cannot be selectively adjusted—quickly—so as to pick up revenue in one area in order to compensate for slack in another area.

EXHIBIT 6–E

DEMAND FOR RAIL TRAFFIC IS AFFECTED BY MARKET FLUCTUATIONS AND SEASONALITY: PERCENTAGE OF CARLOADINGS BY QUARTER IN 1975



Source: AAR

RAILROAD DEMAND FLUCTUATES AMONG COMMODITIES

[Millions of tons originated]

	STCC	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978
Commodity:											
Farm products	01	319.3	334.2	321.8	375.8	356.1	342.2	334	435.4	421.9	428.7
Metallic ores	10	126	126.7	110.4	110.0	125.1	126.5	106.4	97.9	83.2	112.5
Coal	11	383.0	404.6	360.6	375.0	376.1	390.8	407.6	407.5	414.9	383.1
Nonmetallic minerals	14	171.4	161.3	157.8	164.7	170.5	171.0	150.6	135.6	139.6	134.7
Food and kindred products	20	107.7	110.1	106.4	106.1	106.0	107.3	100.2	101.9	98.7	95.4
Lumber and wood products	24	99.9	101.9	104.7	110.0	108.9	105.3	88.6	99.6	99.3	95.1
Pulp, paper and allied products	26	42.5	42.5	42.2	44.3	46.5	48.2	40.6	44.2	44.9	41.6
Chemicals and allied products	28	92.1	91.6	90.8	95.2	97.1	101.4	91.4	100.7	101.2	106.7
Petroleum and coal products	29	34.6	36.3	34.2	48.0	52.6	53.0	45.8	46.4	46.2	44.4
Stone, clay and glass products	32	77.9	73.1	69.9	73.5	72.6	68.0	56.8	57.3	59.9	59.9
Primary metal products	33	87.1	82.2	72.1	60.5	71.4	70.3	51.4	53.1	55.2	60.1
Transportation equipment	37	28.8	24.2	29.5	31.4	34.3	29.8	27.3	32.6	33.1	32.2
Waste & scrap material	40	41.8	39.8	37.5	39.8	44.7	48.1	38.2	27.5	36.1	37.8
Index:											
Farm products	01	100	112	107	105	133	119	113	113	102	108
Metallic ores	10	100	100	87	87	99	100	84	77	66	89
Coal	11	100	106	94	98	98	102	106	106	108	100
Nonmetallic minerals	14	100	94	92	96	99	100	88	79	81	79
Food and kindred products	20	100	102	99	99	98	100	93	95	92	89
Lumber and wood products	24	100	102	105	110	109	105	89	100	99	95
Pulp, paper and allied products	26	100	100	99	104	109	113	96	104	106	97
Chemicals and allied products	28	100	99	98	103	106	110	99	109	113	116
Petroleum and coal products	29	100	105	99	139	152	153	132	134	134	128
Stone, clay and glass products	32	100	94	89	94	93	87	73	74	77	77
Primary metal products	33	100	94	83	70	82	81	59	61	63	69
Transportation equipment	37	100	84	102	109	119	103	95	113	117	112
Waste and scrap material	40	100	95	90	95	107	115	91	90	86	90

Source: Railroad reports to the ICC.

Railroads have attempted to compensate for the lack of rate flexibility by relying on general rate increases in order to keep going. At present, general rate increase requests by the railroad industry have become almost a matter of course at the Interstate Commerce Commission. Most general rate increases have been approved by the Commission in an effort to increase railroad revenue. Unfortunately, the general rate increase is a poor substitute for pricing in a competitive market having fluctuating transportation demands.

Railroads attempt to minimize loss of business as a result of general rate increases by flagging out particularly sensitive traffic. The progressive decline in rail's share of intercity transportation of freight is clear evidence of the industry's inability to keep freight from being diverted to a competitive mode by flagging out or not passing on a general rate increase to competitive customers.

CONCLUSIONS

The rail market has not diminished because the demand for intercity freight traffic has diminished. The demand for intercity freight traffic has tripled since 1947. The demand for rail service appears to have declined because of a combination of factors rising out of the railroad's interdependence upon one another; the chilling effect of regulation on price competition and a capital need shortfall which creates a vicious cycle of deteriorating plant causing poor service and loss of shippers causing loss of revenue which further erodes the funds necessary to stem the deterioration of plant and facilities.

PART 5—RAILROAD RATES AND COAL

RAILROAD RATES

Railroad rates are simply the price that a railroad charges for carrying freight from one place to another. In that respect—but only in that respect—railroad rates are no different than charges made for any other service or prices charged for any product in a grocery store.

In all other respects, railroad rates are far different from charges for services or prices for products. The first difference is that railroad rates are regulated. The railroad industry has in effect had price controls ever since the Interstate Commerce Act was enacted in 1887. With price controls, there is the inevitable requirement of filing, publication, and formal procedure for any price change.

The other major difference between railroad rates and prices or charges used in other businesses is the sheer number of rates which must be listed, published, and billed. It has been estimated that as many as a trillion rates are filed within the Interstate Commerce Commission. The neighborhood supermarket, on the other hand is probably working with no more than 400 to 500 different items to price. The railroad industry is working with different rates or charges between virtually every city and town in America and those rates have further differences based on the commodity to be shipped and a

number of other variables, including how it is to be shipped, in what, when, and hundreds of other peculiarities or conditions ranging from car cleaning to special servicing. The sheer number of rates on file at the Commission is mind-boggling. It is also a direct product of long-term comprehensive price regulation. The complexity of railroad rates arising out of the sheer number of rates and requirements for filing and publication is further complicated because of the process used in establishing or changing rates. Approximately 70 per cent of all traffic on the railroads is interchanged and thereby travelling under a joint rate. A joint rate is one which is agreed upon by two or more rail carriers. Each carrier must agree to the rate and once the rate is fixed, no carrier can change the rate unless all other participants in the movement to which the rate applies agree. As a practical matter, then, collective ratemaking became inevitable if for no other reason than to deal with an unwieldy ratemaking system.

The rate bureau is the mechanism used by the industry for collective ratemaking. The Commission, acting pursuant to the Reed-Bullwinkle Act (1948), reviews rate bureau agreements entered into by the carriers and approves, rejects, or modifies such agreements. Once the Commission approves an agreement, practices permitted under the agreement are given immunity from the anti-trust laws. This immunity protects both carriers and shippers with respect to their rate bureau activities.

Because rate bureaus are the machinery used to keep the unwieldy railroad pricing system afloat, they often become the focal point for railroad ratemaking reform. The 4-R Act placed some restrictions on the type of agreements that the Commission could approve under Section 5(a) of the Interstate Commerce Act, i.e., the Reed-Bullwinkle Act provision. Those restrictions included the right for a carrier with a single line rate to institute independent action on his single line rate even if carriers in a parallel joint line rate did not agree. There is—and always has been—some independent action whereby certain carriers would publish single line rates that differed from parallel joint line rates. For the most part, however, the changes in rate bureaus under the 4-R Act did not affect the basic workings of a rate bureau in the railroad pricing system.

In the last decade, the railroad industry has relied primarily upon general rate increases in order to increase their revenue. In that environment, the rate bureau serves as a meeting place for determining hold-downs or flag-outs for certain commodities or movements affected by a general rate increase. (The reason for a hold-down or flag-out is that the particular movement or commodity group could not safely absorb a rate increase, i.e., the traffic would go to another mode rather than pay the increase). Of course, the rate bureaus also dealt with new rates which are constantly being added to the trillions of published rates already filed with the Commission.

As an offshoot of its price-setting function, the rate bureau publishes rates which are made available to the shipper. The rate publishing function is generally accepted and useful to both carriers and shippers. In short, the current system of rate bureau rate publication facilitates public knowledge of any rate change.

When one analyzes most criticisms made of rate bureaus, it becomes apparent that the criticism is not of the rate bureau as such but rather

is a criticism of the tangled web which makes up the railroad pricing system generally. The tangled web of railroad prices becomes a multilayer of tangled webs because, once in place, joint rates become virtually immune to selective or individual changes. As previously pointed out, each carrier who participates in a joint rate has a veto power over any change in that rate. This rigidity in the rate is disadvantageous to the shipper in that the rate is unlikely to change even to meet competition. And it is disadvantageous to each railroad because it fails to result in pricing which more adequately reflects charges that have a relationship to value of service. In short, the rate procedure itself, rather than the marketplace, controls the price decisions, even if circuitous routes result, thereby eroding efficiency.

THE DISTRIBUTION OF RAILROAD PRICES

Railroad pricing is completely regulated under the Interstate Commerce Act, which mandated that rates must be "just and reasonable." As previously pointed out, the 4-R Act began to move the "just and reasonable" determination away from the specific determination of reasonableness in every case to a system which presumed reasonableness where there was competition among providers of the transportation. The "market dominance tests," as now proposed by the Commission, would deem all traffic which yielded to the railroad revenue equal to less than 150 per cent of the variable cost to be reasonable without any Commission review. Traffic having a revenue to variable cost ratio between 150 and 180, would be presumed to be competitive and the shipper would have a burden of showing that such rates were unreasonable. Variable cost has thus become an important consideration in determining the reasonableness of railroad rates. Variable cost represents the cost of the railroad for a particular movement, e.g., fuel, labor costs. It does not include the fixed costs to the railroad. The Commission has determined that for railroads to receive an adequate rate of return, all traffic carried by the railroad would have to be charged at a rate which produced revenue equal to about 150 per cent of the variable cost (at present, the average ratio of revenue to variable cost for all traffic on the railroad is about 127 per cent).

There are two major reasons why all traffic on the railroads cannot be charged a rate which produces revenue equal to precisely 150 per cent of the cost of the particular movement. First, competition from other transportation modes is available to most shippers. The very price competitive nature of transportation services results in the rate being held down. Second, certain commodities or shipments simply cannot remain in the marketplace if the rate becomes too high for the product.

Since it is impossible for everything moving on the railroad to be charged exactly the same price, railroads have used differential pricing, which is used by most businesses—whether or not regulated.

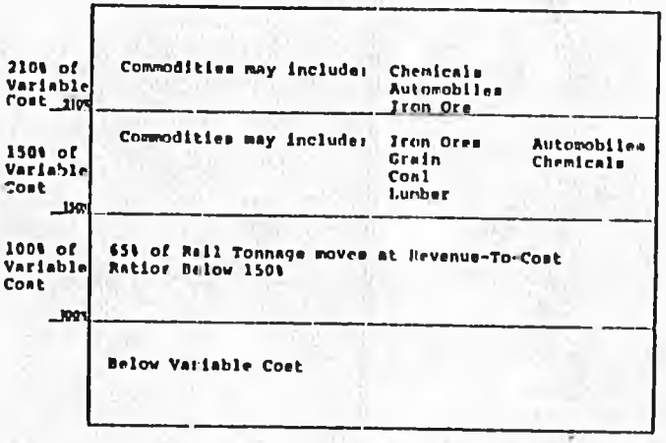
In differential pricing, the seller in effect allocates a larger portion of his overhead to certain transactions than others in order to be competitive. For example, an automobile manufacturer may allocate $3,000 of the cost of overhead to the price charged for its luxury car while allocating only $300 of overhead for the price charged for its

economy car. Since more economy cars are sold than luxury cars, the aggregate contribution of revenue to the overhead or fixed expenses of the car's manufacturing company may be greater from the sales of the economy car than from the sale of the luxury car. The purchaser of luxury car would have to pay considerably more for his car were it not for the contribution to fixed expenses by purchasers of economy cars. Differential pricing tends to optimize the advantage for all users of the service or purchasers of the goods.

Differential pricing in a regulated industry can become distorted because regulatory forces become controlling rather than market forces. In other words, rates can be kept down on certain commodities even though that commodity could absorb the higher rate if only market forces were controlling. In the railroad industry, the long-term effect of rate regulation has been to minimize the beneficial effects that can accrue from differential pricing. Nevertheless, differential pricing is used and a considerable contribution is made to the fixed cost and overhead of the railroad industry from the movement of goods which are in competitive transportation markets. Over two-thirds of the revenues received by the railroads come from traffic which is moving at less than 150 percent of revenue to variable cost—the fully allocated cost the Commission has found is needed for the industry to receive an adequate return on investment. The following chart shows the approximate distribution of railroad rates with respect to the revenue to variable cost ratio.

Chart 5A

Distribution of railroad revenue, related to variable costs



All products in the marketplace reflect a cost for transportation. The percent of final price of products accounted for by transportation charges is relatively small. Chart 5–B below shows that percent for various products.

CHART 5–B.—*Percent of final price of products accounted for by transportation charges*

Product	*Percent*
Building paper and board	13.4
Wheat	8.1
Agricultural chemicals	7.6
Malt liquors	5.9
Wheat flour milling products	5.3
Iron and steel pipe	5.2
Manufactured iron and steel	4.8
Canned fruits and vegetables	4.1
Semifinished steel	4.0
Pig iron	3.8
Plastics products	3.8
Farm machinery	3.5
Plastic materials	3.5
Rubber	3.5
Fresh meat	2.9
Sugar	2.8
Lumber	2.5
Aluminum shapes	2.3
Cotton	2.2
Primary copper products	1.7
Textile products	1.2
Automobiles	.9

Source: Interstate Commerce Commission.

When the price of transportation affects the marketability of a product, that fact alone causes a reduction in the transportation price if the transportation company is receiving any contribution to its fixed cost from having the business.

COAL AND RAILROADS

Coal is the number one commodity carried by the railroads. In 1978, despite the UMW strike, it represented the following for the nation's major railroads:

19.3 per cent of total carloadings (4.4 million coal loadings)
13.5 per cent of gross freight revenues ($2.8 billion)

For major railroads, coal had the following impact:

Norfolk and Western—60.6 per cent of originated tonnage and 35.5 per cent of revenues;

Chessie System—57.6 per cent of originated tonnage and 32.3 per cent of revenues;

Burlington Northern—43.5 per cent of originated tonnage and 23.7 per cent of revenues;

Family Lines—30.5 per cent of originated tonnage and 18.0 per cent of revenues;

Southern Railway System—27.8 per cent of originated tonnage and 12.6 per cent of revenues.

ConRail—23.1 per cent of originated tonnage and 10.9 per cent of revenues;

Those six railroads now account for 74.9 per cent of total railroad coal revenues and 79.6 per cent of total railroad coal carloadings originated. For the railroad industry as a whole, coal accounted for 33 per cent of tonnage; 22 per cent of all carloadings, and 16 per cent of total rail revenues.

In view of the nation's efforts to become less dependent on foreign oil through the use of more coal, railroad coal rates have been carefully examined. Nationwide, railroad coal rates averaged about 1.96

cents per ton mile in 1979. One way to determine whether that rate is too high or too low is to compare it with other shipments on the railroads. As a factual matter, coal generates less revenue per ton mile than the average revenue per ton mile generated in the industry (1.96 cents per ton mile vs. nearly 3.5 cents per ton mile). Chart 5-C illustrated the low revenue level from coal as compared to total traffic and other bulk commodities.

As a matter of fact, in current dollars, rail rates for coal have lagged far behind coal prices. Chart 5-D shows how the market has been accepting a higher price for delivered coal even though the rail rate has increased very little from 1931.

CHART 5-C

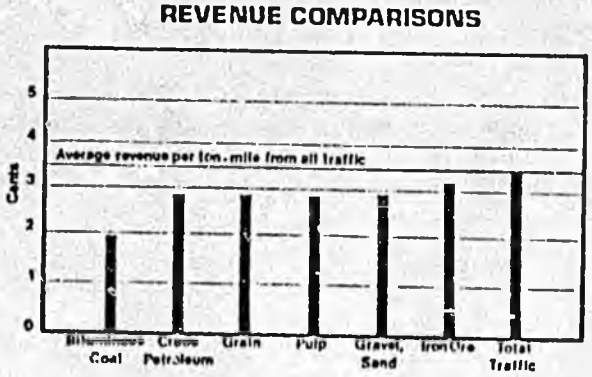
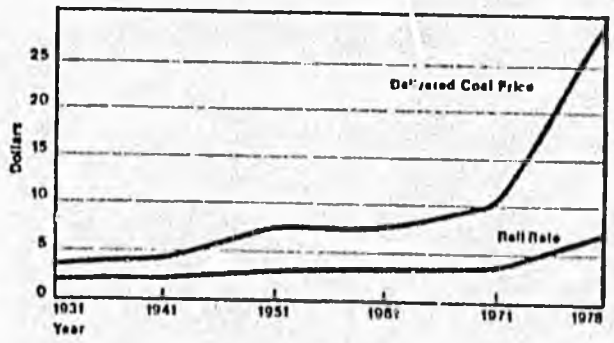


CHART 5-D



In the 1960's, oil was cheap and plentiful and coal was not the fuel of choice for many reasons. Coal prices dropped somewhat—and rail coal rates dropped with them, even further. Chart 5-E shows that by 1967, coal had dropped to $2.56 a ton (in 1959 dollars) and by 1978, has still not increased to the rate that it was in 1959.

CHART 5-E

COAL RATES

[Per ton]

Year	Average realization rates (f.o.b. mine)	Average rail rates	Total
Current dollars:			
1959	$4.27	$3.45	$8.22
1967	3.62	3.00	6.62
1978	177.46	57.32	179.72
1978/1959 (percent)	−2.1	−13.0	−2.3
1967/1959 (percent)	+369.6	+112.1	+751.6
1978/1959 (percent)	+341.8	+144.8	+799.9
Constant 1959 dollars: [1]			
1959	$4.27	$3.45	$8.22
1967	3.95	2.56	6.52
1978	19.96	53.25	173.21
1978/1959 (percent)	−17.2	−25.8	−20.7
1967/1959 (percent)	+108.8	−5.8	+650.7
1978/1959 (percent)	+152.7	+27.0	+102.6
Constant 1967 dollars: [1]			
1967	$4.62	$3.00	$7.62
1978	111.67	53.81	165.48
1978/1967 (percent)	+152.6	+27.0	+101.1

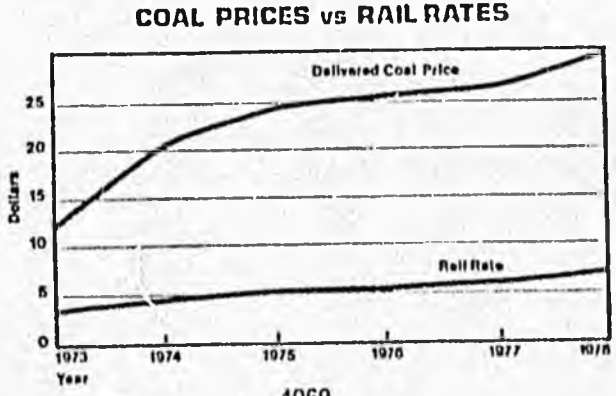
[1] Deflated by implicit price deflator, GNP.

Source: Col. 1, Department of Energy. Col. 2, Freight Commodity Statistics, ICC.

As shown in Chart 5-E, in 1967, the rail rates accounted for 40 per cent of the delivered price of coal. By 1978, the rail proportion of the cost had shrunk to less than 25 per cent. In constant 1959 dollars, rail coal rates have decreased, on the average, 5.8 per cent since 1959, while coal prices at the mine mouth have increased by over 108 per cent.

Chart 5-F shows the tremendous spread between rail rates and delivered coal prices from 1973—the beginning of oil price escalation.

CHART 5-F



Misunderstandings about rail coal rates have come about for several reasons. First, in order to get clean burning coal, longer hauls are necessary than those of the past. For this reason, a relatively low "per ton mile" rate translates into a substantial "delivered" rate. For example, a controversial "high" rate to San Antonio of $19.04 per ton delivered was produced by a rate of 1.15 cents per ton mile. This rate is well below the national average of all coal rates—but it is applied to a haul of 1,650 miles. On a revenue to variable cost basis, the San Antonio coal haul is less than 174 per cent. In other words, it is well below the mean point of 200 per cent for that ⅓ of rail traffic which is producing more than 150 per cent of revenue to variable costs. Over the long term, this will mean a further deterioration of the railroad system because of inadequate earnings. In the short term, it represents the need for the railroad industry to expend money simply to get coal traffic. All of the principal coal-hauling railroads are investing heavily in new equipment and improved track to handle the anticipated increases in coal traffic. It is estimated that 4,200 replacement coal cars will be needed each year at a cost of $127 million. Replacement needs for locomotives would be 210 each year at a cost of $123 million. In the last five years, open top hopper orders have totaled 83,373—an average of nearly 16,700 a year. Consequently, while coal traffic may be generating revenues slightly above fully allocated costs for all traffic, it is in the short term causing an increased cash outlay by the railroad industry.

COAL RATES AND ELECTRIC BILLS

Railroad transportation represents about 25 per cent of the average of the delivered price of coal to electric utilities. A ton of coal can produce about 2,182 kilowatt hours which would have a resale consumer price of $87.28. Rail transportation—at 2 cents per ton mile over a 400 mile route (the national average haul)—represents about $7.90 per ton or 9 per cent of the retail price of electricity produced from coal.

The average residential user consumes about 737 kilowatt hours per month. Thus, if rail transportation were absolutely free, it would save the consumer $8.60 per month.

PART 6.—GOVERNMENT TREATMENT OF RAILROADS

GENERAL DISCUSSION

While significant transportation legislation has been passed in recent years, the problems besetting the rail industry remain. Perhaps the key is the fact that two forces have remained largely unchanged:

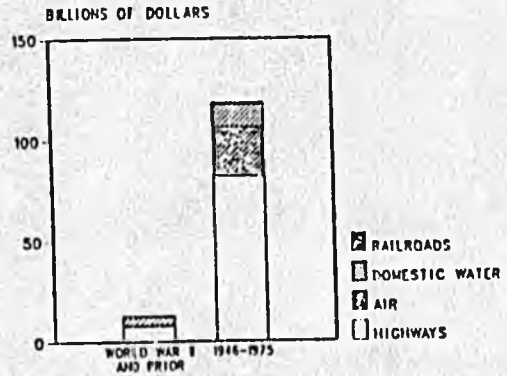
Direct Federal aid to transportation has remained heavily oriented toward the truck, water and air modes for decades.

Interstate rail traffic is almost totally regulated whereas competing modes are much less constrained by regulation.

As shown on Chart 6-A, railroads received only one percent of direct Federal aid to transportation during the 1916–1975 period. The chief source of competition, truck transportation, received 60 percent of the direct Federal aid over the same period.

CHART 6-A

RAILROADS RECEIVE RELATIVELY LITTLE DIRECT FEDERAL AID TO TRANSPORTATION



NOTE: Expenditures relate to both freight and passenger operation.

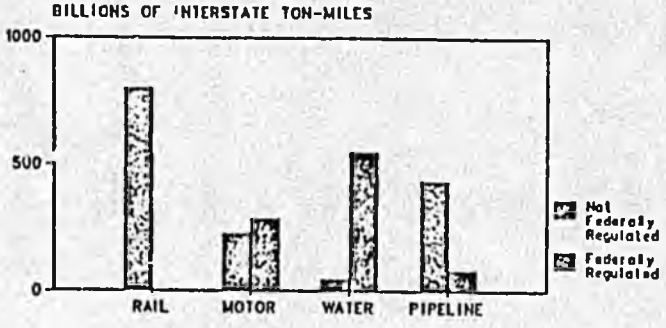
Source: Department of Transportation,
Study of Federal Aid to Rail Transportation,
January 1977.

This imbalance of aid leads to problems which are further exacerbated by the heavy burden of regulation. As Chart 6-B shows, virtually all interstate rail traffic is federally regulated while substantial proportions of competing modes are not federally regulated. The regulation of a few rail commodities has recently been relaxed, but the pattern of disparate treatment of the modes remains.

The Federal regulations of rail described in Chart 6-B refers to the regulatory purview of the Interstate Commerce Commission. However the following Federal agencies also exert control over various aspects of the rail industry.

CHART 6-B

RAILROADS ARE MUCH MORE HEAVILY REGULATED THAN OTHER TRANSPORTATION MODES



Source: ICC, 92nd Annual Report

Council on Wage and Price Stability;
Environmental Protection Agency;
Securities and Exchange Commission;
Federal Railroad Administration, DOT;
External Revenue Service;
Federal Communications Commission;
Federal Trade Commission;
National Transportation Safety Board;
Railroad Retirement Board;
Equal Employment Opportunity Commission;
National Bureau of Standards; and
U.S. Department of Labor.

In addition to the constraints imposed by Federal regulations, the rail industry is also faced with multiple and diverse regulations at the state level. As Chart 6-C indicates, fifty states have individual regulatory jurisdiction over railroads. In some instances, such as Minnesota, the rail industry is regulated by more than one state agency. The scope of state regulation encompasses entry, operating authority, abandonment, rates, accounting, service safety, construction, security issues, mergers, acquisitions, insurance and reporting. It should be noted that each of these areas is also regulated at the Federal level.

CHART 6-C

REGULATION OF RAILROADS



SOURCE: 1978 Annual Report on Utility and Carrier Regulation NARUC.

FOOTNOTES TO CHART 6-C

[1] Annual reports are required to be filed showing intrastate operations.
[2] Hearings.
[3] Intrastate.
[4] Does not apply to construction of branch.
[5] Public convenience.
[6] Residents, Constituents, subsidiary, main track mileage in excess of one hundred.
[7] Not subject to state regulation.
[8] Michigan Department of State Highways and Transportation.
[9] Stations and tracks.
[10] All grade crossing accidents all railroad accidents and hidden failures resulting in loss of life or serious injury and accidents resulting in loss of property of $750 or greater.
[11] Under a reorganization plan submitted to the Legislature on September 10, 1948, all purchase and railroad regulatory and safety functions formerly performed by the New Jersey Board of Public Utilities are the responsibility of the New Jersey Department of Transportation effective January 1, 1949.
[12] Abandonments of stations and agencies only; line abandonments by other authority.
[13] Certain structures.
[14] On railroads operating under PUC jurisdiction in State of Hawaii. The PUC does have authority to regulate railroads. The only railroad now operating in Hawaii is being operated on private property.. a scenic attraction
[15] Vermont Agency of Transportation, Department of Rail, Rail, Waterways and Motor Carrier Services, State Administration Building, Montpelier, Vermont 05602.
[16] Intrastate open interchange of less than three miles in length or over which the ICC has not exercised its jurisdiction
[17] Safety jurisdiction repealed in 1978
[18] Annual statement required - Section 4007.11.
[19] Abandonments of stations and agencies, abandonments of car spur, industrial, team, switching or side track which has been used directly by the shipping public.

The constraints imposed by regulation have been considerable. Not the least of these constraints has been the impact on the railroads' ability to recover costs. It has been estimated that the combined effect of Federal and state regulatory lag in adjusting rates to cover inflation has generated losses of over $1 billion per year over the past two to three years.

Changes in transportation legislation and regulation have responded to both the problems of the rail industry and the increasing competitiveness of the transportation marketplace. However, these changes have proved insufficient to fully address the needs of the industry and its shippers.

TRANSPORTATION EXPENDITURES ACCORDING TO THE CONGRESSIONAL BUDGET OFFICE

The following eight tables summarize federal transportation expenditures by mode for fiscal years 1978 and 1979. Also included are estimates of expenditures by the private sector and by state and local governments for 1978. With only a few exceptions, these data represent cash outlays rather than obligations. For rapidly growing capital-intensive programs such as mass transit, there can often be a significant difference between obligations and outlays.

Tables 1 through 6 cover the major modes of transportation: highways, air, water, railroads, mass transit, and pipelines, respectively. Table 7 presents federal expenditures that could not be easily assigned to a single mode, the Office of the Secretary of Transportation and the Interstate Commerce Commission, for example. Table 8 summarizes federal expenditures for 1978, comparing them with private expenditures and with private plus government expenditures combined.

In examining these tables, several limitations should be kept in mind. First, although federal expenditures are calculated from the federal budget in a relatively straightforward way, private, state, and local expenditures are estimated from a variety of sources. The estimates of expenditures by state and local governments are particularly uncertain because of the wide range in the quality of data provided by the different governments and because of the difficulty in separating federal transfer payments from true state and local expenditures.

Second, opinions vary about the exact definition of federal expenditures. Several modes, international shipping and passenger and freight railroads, for example, receive significant federal aid in the form of loan guarantees. These do not usually represent a federal cash outlay unless the loans default. In the attached tables, loan guarantees are not included in the estimate of federal expenditures, but are included at the bottom as important, supplementary aid. Tax expenditures, however, are included in federal expenditures since they represent federal revenues foregone. The largest federal transportation expenditure, the deductibility of state and local fuel taxes for non-

business purposes, has since been repealed, but was in effect in 1978 and 1979.

Third, opinions also vary over whether or not user charges should be netted out of federal expenditures. Government expenditures for two modes, highways and air transportation, are financed in large part by user charges. At the federal level, the Highway Trust Fund and the Airport and Airway Trust Fund are the financing mechanisms used. Because of these user charges, federal and state and local government expenditures are presented on both a gross basis and a net basis after subtracting the user charges from gross expenditures. Private expenditures have been adjusted accordingly to maintain the same total level of private plus public expenditures.

Finally, user charges also raise questions of the proper allocation of costs and tax receipts among the various submodes. A recent study by the Federal Aviation Administration [1] indicates that general aviation (primarily private business planes) paid only about 14 percent of their share of Federal Aviation Administration expenditures in 1978. In contrast, commercial air carriers, largely through the 8 percent excise tax on passenger tickets, covered their share of Federal Aviation Administration expenses. There is no comparable, up-to-date study of federal highway expenditures, although the Department of Transportation is currently conducting a major highway cost allocation study. Findings are not yet available from this study although studies completed in the 1960's indicated that the heaviest classes of trucks did not fully pay their way.

The summary of expenditures shown in Table 8 is necessarily more aggregated than that of the earlier tables because of data limitations. This aggregation may mask substantial variations among the segments of the industries shown. For example, the water mode includes several quite different submodes, including commercial inland waterway users, deep-draft vessels and recreational boating. The final two columns that compare federal expenditures to private expenditures and to total expenditures, represent averages. If reliable data were available by submode, the results for some segments of the industry could differ substantially from the reported value, with the inland waterway industry probably showing a ratio of federal expenditures to private about three times that shown for water transportation as a whole, and the other submodes showing ratios substantially less than the average. A similar problem arises when considering federal railroad expenditures. As shown in Table 8, federal expenditures for rail passenger service (Amtrak and the Northeast Corridor project) are 2½ times private expenditures while federal expenditures for the rail freight industry are only about 4 percent the size of private expenditures. Even here, if freight expenditures were broken into aid to Conrail and other rail aid, the results would show a much lower ratio between federal and private expenditures for non-Conrail railroads—probably around 1 percent.

[1] Federal Aviation Administration, *Financing the Airport and Airway System: Cost Allocation and Recovery*, November 1978.

TABLE 1.—HIGHWAY MODE EXPENDITURES FOR 1978 AND 1979

[In millions of dollars]

	1978	1979
Private expenditures:[1]		
Passenger transportation:		
Automobiles and trucks	228,868	NA
School buses	2,740	NA
Intercity buses	1,119	NA
Taxi and other	2,226	NA
Subtotal, passenger	235,037	NA
Freight transportation:		
Intercity truck:		
ICC-regulated	36,500	NA
Non-ICC-regulated	43,059	NA
Local truck	67,630	NA
Rail	295	NA
Subtotal, freight	147,484	NA
Total, private	382,441	NA
State and local government:[2]		
Gross expenditures	22,849	NA
User fees	16,617	NA
Net expenditures	6,176	NA
Federal Government:[3]		
Federal Highway Administration (Department of Transportation):		
Federal-aid highways[4]	5,876	6,875
Other FHWA[5]	193	247
National Highway Traffic Safety Administration (Department of Transportation)	210	247
Bureau of Indian Affairs (Department of Interior):		
Road maintenance	11	13
Indian road system	76	78
Bureau of Land Management (Department of Interior): Access roads	9	5
National Park Service (Department of Interior)	46	47
Forest Service (Department of Agriculture):		
Forest roads and trails	383	387
Less user fees[6]	270	246
Net expenditures	114	101
Economic Development Administration[7] (Department of Commerce)	695	793
Small Business Administration	14	57
Appalachian Region Commission	185	192
Tax expenditure—deduction of State and local gasoline tax as nonbusiness expense	970	350
Gross Federal expenditures	1,299	8,693
Highway trust fund receipts[8]	1,567	8,646
Net Federal expenditures	732	647

[1] Calendar year.
[2] Fiscal year. Excludes Federal expenditures except for about $850,000,000 in general revenue sharing. Estimates of user fees includes interest earned but exclude effect of bond proceeds and debt repayment.
[3] Fiscal year. In addition, for 1978, about $850,000,000 of general revenue sharing funds were used for highways. These funds are included in State and local expenditures. No estimate is available for 1979.
[4] Excludes use of Interstate transfers for highways (included in mass transit data) but includes use of urban system program funds for transit.
[5] Excludes Dingell-Cap and territorial highways since they are outside the continental United States, excludes miscellaneous trust funds supported by user fees, and rural highway public transportation demonstration program (included in transit). These programs totaled $16,900,000 and $15,600,000 in 1978 and 1979 respectively.
[6] Excludes roads built with revenues from Oregon and California grant lands and other grant lands.
[7] Includes 10 percent of National Forest receipts set aside as permanent appropriation for roads, and timber purchaser roads and other roads built by the Forest Service but financed by private business.
[8] Includes $683,000,000 and $763,000,000 for 1978 and 1979 respectively for local public works program. Some of these funds may be included in State and local spending.
[9] Includes interest earned on cash balance in trust fund.

Note: Totals may not add due to rounding.

Source: Compiled by Congressional Budget Office. Private expenditures from Transportation Facts and Trends, Transportation Association of America, Quarterly Supplement, January 1980. State and local government expenditures from Federal Highway Administration, Highway Statistics 1978, table III-10. Federal expenditures from The Budget of the United States Government for fiscal year 1980 and 1981 and from supporting documents.

TABLE 2.—AIR TRANSPORTATION EXPENDITURES FOR 1978 AND 1979

[In millions of dollars]

	1978	1979
Private expenditures:[1]		
Passenger transportation:		
General aviation:		
Aircraft	1,716	NA
Operating costs	3,917	NA
Commercial aviation:		
Domestic	12,098	NA
International	6,399	NA
Subtotal, passenger	27,130	NA
Freight transportation:		
Domestic	1,729	NA
International	925	NA
Subtotal, freight	2,654	NA
Total, private expenditures	29,784	NA
State and local government:[2]		
Gross expenditures	1,348	NA
User fees	1,250	NA
Net expenditures	98	NA
Federal expenditures:[3]		
Federal Aviation Administration (Department of Transportation):		
Capital	630	657
Operating[4]	1,657	1,723
Other	465	650
Civil Aeronautics Board:		
Operating subsidies	95	98
Other	7	6
National Aeronautics and Space Administration[5]	328	264
Department of Commerce[6]	38	38
Department of State: U.S. participation in International Civil Aviation Organization[7]	*	8
Total, Federal expenditures	3,127	3,237
Airport and airway trust fund receipts[8]	1,545	1,809
Net Federal expenditures	1,582	1,428
New loan guarantees	41	8

[1] Calendar year.
[2] Fiscal year.
[3] Net of user fees for operation and maintenance of Washington Metropolitan airports.
[4] Costs and obligations. In addition, part of the Department of Defense research and development expenditures has eventual benefits for civil aviation.
[5] Economic Development Administration ($13,000,000 and $10,000,000 in 1978 and 1979 respectively,[1] and National Oceanic and Atmospheric Administration (for charts and weather service).
[6] Obligations.
[7] Includes interest earned on cash balance in trust fund.

Note: Totals may not add due to rounding.

Source: Compiled by Congressional Budget Office. Private expenditures from Transportation Facts and Trends, Transportation Association of America, Quarterly Supplement, January 1980. State and local government expenditures from Bureau of the Census, Government Finances in 1978-79. Federal expenditures from The Budget of the United States Government for fiscal years 1980 and 1981 and from supporting documents.

TABLE 2.—WATER TRANSPORTATION EXPENDITURES FOR 1978 AND 1979

[In millions of dollars]

	1978	1979
Private expenditures:[1]		
Passenger transportation:		
Recreational boating	6,690	NA
Commercial domestic	29	NA
Commercial international	2	NA
Total, passenger	6,991	NA
Freight transportation:		
International	7,303	NA
Coastal and intercoastal	1,512	NA
Inland waterways	1,316	NA
Great Lakes	493	NA
Total, freight	10,624	NA
Total, private	17,615	NA
State and local government (1977)	768	NA
Federal Government:[2]		
Coast Guard (Department of Transportation):[3]		
Operating expenses	657	726
Capital expenses[4]	137	132
Other[5]	46	45
Saint Lawrence Seaway (Department of Transportation)[6]	(3)	(3)
Corps of Engineers (Department of Defense)		
Construction[7]	446	573
Operations and maintenance	485	529
Maritime Administration (Department of Commerce):		
Ship construction subsidy	157	201
Operating differential subsidy	303	301
Other[8]	46	138
National Oceanic and Atmospheric Administration (Department of Commerce)	12	13
Economic Development Administration (Department of Commerce)	30	37
Small Business Administration	16	12
Tax expenditure—Deferral of tax on shipping companies	80	75
Total Federal expenditures	2,407	2,845
Loan guarantees (Maritime Administration)[9]	1,284	459

[1] Calendar year.
[2] Fiscal year.
[3] Excludes defense related activities such as retired pay and reserve training and also excludes operating expenses for enforcement of laws and treaties, marine science and polar ice operations, and military readiness.
[4] Includes acquisition, construction and improvements for all programs and alteration of bridges.
[5] Research, development, test and evaluation, State boating safety grants, and pollution fund. Excludes miscellaneous small trust funds.
[6] Includes revenues of $10,000,000 and $11,000,000 in 1978 and 1979 respectively. Excludes any interest on over $110,000,000 in Federal funds used in original construction of seaway.
[7] Does not include navigation share of multi purpose power projects.
[8] Research and development, operations, and training, and net outlays for Federal ship financing fund, and other smaller funds.
[9] At the end of 1979, there were $6,700,000,000 in loan guarantees and commitments outstanding.

Note: Totals may not add due to rounding.

Source: Compiled by Congressional Budget Office. Private expenditures from Transportation Facts and Trends, Transportation Association of America, Quarterly Supplement, January 1980. Recreational boating estimate from National Marine Manufacturers Association. State and local government expenditures from Bureau of the Census, Government Finances in 1976-1977. Federal expenditures from The Budget of the United States Government for fiscal years 1980 and 1981 and from supporting documents.

TABLE 4.—RAILROAD EXPENDITURES FOR 1978 AND 1979

[In millions of dollars]

	1978	1979
Private expenditures:[1]		
Rail freight	20,993	NA
Loading and unloading freight cars	1,531	NA
Rail passenger	368	NA
Total, private	22,892	NA
State and local government expenditures[2]	NA	NA
Federal Government expenditures:[3]		
Federal Railroad Administration (Department of Transportation):		
Amtrak	216	228
Northeast corridor	204	199
Rail freight[4]	120	155
Other[5]	87	97
United States Railway Association:		
ConRail and other railroads[6]	809	738
Administration	19	21
Railroad Retirement Board:		
"Windfall" payment to railroad retirement trust fund	250	313
Regional rail transportation protection (labor grants)	90	72
Economic Development Administration: Department of Commerce	10	10
Tax expenditures—5-year amortization on rolling stock	(40)	(45)
Total Federal expenditures	2,250	2,367
Loan guarantees[7]	160	323

[1] Calendar year.
[2] No comprehensive data available. Expenditures are believed to be small, about $100,000,000.
[3] Fiscal year.
[4] Rail service assistance, railroad rehabilitation and improvement financing (includes redeemable preference shares), and Alaska Railroad (net of revenues of $29,000,000 and $25,000,000 in 1978 and 1979 respectively).
[5] Administration, railroad safety and research and development.
[6] Off-budget loans represent $69,000,000 and $30,000,000 in 1978 and 1979 respectively. Some of these loans are to railroads other than ConRail.
[7] These represent new loan guarantees and have not been adjusted for any loan guarantees canceled during the year. At the end of 1979 a total of over $1,600,000 in loan guarantees were outstanding.

Source: Compiled by Congressional Budget Office. Private expenditures from Transportation Facts and Trends, Transportation Association of America, Quarterly Supplement, January 1980. Rail passenger expenditures from "Railroad Fact Book," Association of American Railroads. Federal expenditures from The Budget of the United States Government for fiscal years 1980 and 1981 and from supporting documents.

TABLE 5.—TRANSIT EXPENDITURES FOR 1978 AND 1979

[In millions of dollars]

	1978	1979
Private expenditures[1]	2,761	NA
State and local governments[2]	2,155	NA
Federal expenditures:[3]		
Urban Mass Transportation Administration (Department of Transportation)		
Capital[4]	1,260	1,567
Operating	618	767
Other[5]	155	128
Washington Metropolitan Area Transportation Authority[6]	169	84
Total, Federal expenditures	2,102	2,546

[1] Calendar year.
[2] State and local operating assistance for 1978 as estimated by American Public Transit Association. Net State and local capital assistance for 1977 estimated by subtracting Federal capital outlays from total State and local capital expenditures as estimated by the Bureau of the Census.
[3] Fiscal year.
[4] Includes highway use of Interstate transfer grants but excludes transit use of urban system highway funds (included in highways).
[5] Research and development, planning, administration, and rural highway public transportation demonstration.
[6] $49,000,000 and $61,000,000 in 1978 and 1979 respectively represents Federal share of debt service on $97,000,000 in bonds guaranteed by the Federal Government. Rest of expenditures are for capital.

Note: Totals may not add due to rounding.

Source: Compiled by Congressional Budget Office. Private expenditures from American Public Transit Association (includes commuter railroad and local portion of intercity bus). State and local expenditures see footnote 2. Federal expenditures from The Budget of the United States Government for fiscal years 1980 and 1981 and from supporting documents.

TABLE 6.—PIPELINE EXPENDITURES FOR 1978 AND 1979

[In millions of dollars]

	1978	1979
Private expenditures: [1]		
Oil pipeline:		
Regulated	4,907	NA
Nonregulated	545	NA
Natural gas pipeline	2,560	NA
Total, private expenditures	8,012	NA
State and local government [2]	NA	NA
Federal Government: [3]		
Department of Transportation: Pipeline safety grants	2	2
Federal Energy Regulatory Commission [4]	15	20
Total, Federal expenditures	17	22

[1] Calendar year.
[2] Assumed to be zero.
[3] Fiscal year.
[4] Estimate based on obligations.

Note: Totals may not add due to rounding.

Source: Compiled by Congressional Budget Office. Oil pipeline expenditures from Transportation Facts and Trends, Transportation Association of America, Quarterly Supplement, January 1980. Natural gas pipeline expenditures are estimated by Interstate Natural Gas Association of America. Federal expenditures from The Budget of the United States Government for fiscal years 1980 and 1981 and from supporting documents.

TABLE 7.—MULTIMODAL OR UNALLOCATED FEDERAL TRANSPORTATION EXPENDITURES FOR FISCAL YEARS 1978 AND 1979

[In millions of dollars]

	1978	1979
Department of Transportation:		
Office of the Secretary	42	53
Research and Special Projects Administration [1]	4	12
Other [2]	(4)	2
Interstate Commerce Commission	65	67
National Transportation Safety Board	16	15
National Transportation Policy Study Commission	2	2
Total	124	157

[1] Excludes grants for gas pipeline safety.
[2] Working fund for Transportation Systems Center and, for 1979 only, Office of the Inspector General.

Note: Totals may not add due to rounding.

Source: Compiled by Congressional Budget Office. Private expenditures from Transportation Facts and Trends, Transportation Association of America, Quarterly Supplement, January 1980. Federal expenditures from The Budget of the United States Government for fiscal years 1980 and 1981 and from supporting documents.

TABLE 8.—COMPARISON OF FEDERAL, STATE, AND LOCAL GOVERNMENT, AND PRIVATE TRANSPORTATION EXPENDITURES FOR 1978

[In millions of dollars]

Mode	Expenditures				Federal as percent of private	Federal as percent of total
	Federal [1]	State and local	Private	Total		
Highway:						
Gross	8,799	22,743	358,277	389,799	2.5	2.1
Net of user charges	712	6,126	382,441	389,299	.2	.2
Air:						
Gross	3,127	3,348	26,989	31,464	11.6	9.9
Net of user charges	1,582	98	29,784	31,464	5.3	5.0
Water	2,067	768	17,615	20,790	11.7	9.9
Railroads (total) [2]	2,250	NA	22,892	25,142	9.7	8.8
Freight [3]	1,813	NA	22,524	24,337	8.1	7.5
Passenger [4]	4970	NA	368	1,288	250.8	31.4
Mass transit	2,182	2,155	2,763	7,100	79.0	30.7
Pipeline	17	NA	8,012	8,029	.2	.2
Total:						
Gross [5]	18,406	27,014	436,548	481,968	4.2	3.8
Net of user charges [6]	9,291	9,147	463,503	481,948	2.0	1.9

[1] Does not include estimate of interest subsidy associated with direct loans and loan guarantees.
[2] Excludes State and local capital expenditures, believed to be small (about $100,000,000).
[3] Excludes unallocated Federal railroad expenditures of $617,000,000, primarily payments to the Railroad Retirement Board.
[4] All Federal expenditures (see table 6) except for passenger-related outlays, FRA railroad safety, research and development and administrative expenses and Federal payments to the Railroad Retirement Board.
[5] Federal Railroad Administration expenditures for Amtrak and the Northeast Corridor. Excludes interest subsidy provided by Federal loan guarantees.
[6] Includes unallocated Federal expenditures of $174,000,000 (see table 7).

Source: Congressional Budget Office from tables 1 through 7.

Part 7—Employment Levels and Employee Protection in the Railroad Industry

General Employment Levels

Chart 7-A shows differences in levels of employment for the six major employee classifications as reported monthly to the Interstate Commerce Commission by Class I Line Haul Carriers. The "Percent Difference" column represents a change in the level of employment from a year earlier but does not measure unemployment.

CHART 7-A

TOTAL EMPLOYMENT—CLASS I LINE HAUL RAILROADS

Employee classification	February 1980	February 1979	Difference	Percent difference
I Executives, officials, and staff assistants	17,582	17,003	+579	+3.41
II Professional, clerical and general	90,452	90,558	−106	−.11
III Maintenance of way and structures	74,765	76,386	−1,621	−2.12
IV Maintenance of equipment and stores	104,285	107,319	−3,034	−2.83
V Transportation (other than train, engine, and yard)	20,995	21,169	−174	−.82
VI Transportation (a) (yardmasters, switch tenders and hostlers)	8,383	8,452	−69	−.82
Transportation (b) (train and engine)	140,118	141,291	−1,161	−.81
Total, all employees	460,610	466,778	−6,168	−1.32

Chart 7-B shows railroad employment on a State by State basis.

RAILROAD EMPLOYMENT BY STATES—1977

The following tabulation of railroad employment by states for 1977 covers not only the 482,731 employees of Class I line-haul railroads but also the 48,470 employees of Class II roads and the switching and terminal companies. The 17,060 employees of Amtrak and the 698 Auto-Train employees are not included.

Total employment figures for 1978 are not yet available.

The total 1978 railroad payroll in each state may be approximated by multiplying the number of employees for 1977 by $20,314, the average annual earnings of railroad employees in the United States in 1978.

Chart 7-B

Alabama	8,000	Montana	6,600
Alaska	1,000	Nebraska	13,000
Arizona	3,300	Nevada	1,000
Arkansas	6,800	New Hampshire	400
California	31,500	New Jersey	8,100
Colorado	6,300	New Mexico	2,800
Connecticut	3,400	New York	20,000
Delaware	1,100	North Carolina	6,100
Dist. of Col.	3,700	North Dakota	3,100
Florida	11,500	Ohio	33,000
Georgia	12,200	Oklahoma	4,000
Hawaii	.....	Oregon	7,000
Idaho	3,600	Pennsylvania	44,500
Illinois	47,000	Rhode Island	700
Indiana	15,900	South Carolina	4,100
Iowa	9,000	South Dakota	1,300
Kansas	14,100	Tennessee	10,500
Kentucky	15,200	Texas	29,100
Louisiana	7,000	Utah	4,000
Maine	2,300	Vermont	800
Maryland	8,400	Virginia	15,000
Massachusetts	5,100	Washington	10,200
Michigan	10,500	West Virginia	8,100
Minnesota	15,300	Wisconsin	9,000
Mississippi	4,300	Wyoming	3,000
Missouri	17,400		
		Total	531,200

Chart 7-C shows employment, payroll, and earnings in the rail industry from 1920 through 1978.

EMPLOYMENT, PAYROLL AND EARNINGS

The average number of employees for all Class I railroads decreased by 2 percent from 1977, mainly reflecting the reclassification of 14 roads, layoffs due to coal strikes and an extended railroad strike involving the Norfolk & Western.

Amtrak employment continued to climb, increasing by 10 percent over 1977. Most of these workers were formerly employed by Conrail and its predecessor companies in the operation of the Northeast Corridor properties which Amtrak has assumed.

Excluding Amtrak and Auto-Train, employment has declined 20.1 percent over the past decade while earnings per employee increased by 135 percent resulting in an 87.4 percent increase in annual payrolls.

CHART 7-C

	Number of employees (1)	Number of employees (2)	Compensation[1] (thousands)	Earnings per employee[2] Per year	Per hour
1920	.....	1,660,850	$2,896,564	$1,743	$0.67
1929	.....	967,943	1,853,503	1,896	.75
1944	.....	1,413,677	3,853,345	2,726	.98
1947	.....	1,351,961	4,350,329	3,218	1.20
1951	.....	1,726,000	5,336,194	4,102	1.79
1955	.....	1,058,716	4,993,662	4,719	1.99
1963	.....	680,035	4,629,566	6,806	2.82
1964	.....	663,034	4,697,884	7,084	2.90
1965	.....	639,861	4,793,066	7,490	3.06
1966	.....	630,815	4,857,211	7,734	3.17
1967	.....	610,151	4,911,661	8,045	3.36
1968	.....	590,536	5,110,196	8,654	3.54
1969	.....	578,277	5,367,754	9,274	3.79
1970[3]	.....	564,282	5,711,200	10,086	4.14
1971[3]	544,427	544,233	5,999,968	11,021	4.60
1972	527,235	526,961	6,424,920	12,213	5.03
1973	530,422	529,153	7,048,383	13,327	5.54
1974	533,227	525,177	7,475,634	14,235	5.94
1975	494,348	487,209	7,474,750	15,324	6.39
1976[4]	496,491	482,882	8,278,413	17,144	7.09
1977	501,389	482,731	8,939,411	18,518	7.66
1978[4]	491,251	471,516	9,578,331	20,314	8.40

[1] Includes employees of Amtrak beginning in 1971; Auto-Train for years 1972–77.
[2] Excludes Amtrak and Auto-Train.
[3] Adjusted to include retroactive wage increases.
[4] Preliminary figures. Compensation excludes estimates of retroactive wage increases not paid until 1979.

Chart 7-D shows employment and annual income by Class for 1978.

EMPLOYMENT AND ANNUAL WAGES BY CLASS—1978

Wages of train and engine service employees accounted for 35 cents of the average wage dollar paid in 1978 by Class I railroads, excluding Amtrak and Auto-Train. Wages of maintenance workers also took 35 cents, office and general personnel got 18 cents, off-train transportation employees received 7 cents, while salaries of executives, officials and staff assistants amounted to 5 cents of the payroll dollar.

CHART 7-D

Employee group	Average number of employees	Total payroll (thousands)	Average annual earnings
Executive, officials and staff	16,491	$508,675	$30,846
Professional, clerical and general	94,474	1,708,663	18,084
Maintenance of way and structures	86,233	1,488,587	17,263
Maintenance of equipment and stores	102,406	1,869,809	18,259
Transportation, other than train, engine and yard	22,478	431,318	19,231
Yardmasters, switch tenders and hostlers	8,264	178,530	21,603
Train and engine service	141,270	3,392,749	24,015
Total	471,516	9,578,331	20,314

Note: Preliminary figures. Compensation includes estimates of retroactive wage increases not paid until 1979.

EMPLOYEES PROTECTION

The Transportation Act of 1920 gave the Interstate Commerce Commission jurisdiction over railroad acquisitions, mergers, consolidations, and abandonments. In passing upon applications, the Commission was required to modify the terms and conditions of the applications to pro-

mote the public interest. In the same Act, the Commission was given the mandate to develop a rationalized and efficient railroad system. For a variety of reasons that mandate was never fully implemented and in the 1930's the national depression again focused attention on the need for rationalization of the railroad system. However, there was great concern that the nation could not take any more unemployment than it already had. Therefore, the Emergency Transportation Act of 1933, in essence placed a moratorium on job reductions resulting from railroads trying to economize during the depression by consolidating operations. In effect, all railroad jobs were protected and railroads had to fill those jobs even if they became vacant because of death, resignation, or retirement of an employee. No consolidations of operations took place under the 1933 Act, and more and more railroads hovered on the brink of bankruptcy or in fact were bankrupt.

WASHINGTON JOB PROTECTION AGREEMENT

In order to allow implementation of consolidations, mergers, or pooling of equipment or facilities, most railroad carriers and the rail unions signed the Washington Job Protection Agreement on May 21, 1936. Its premise was a simple one: the carriers' actions would result in reduced labor costs. These savings should be shared with labor to ameliorate the effects of those actions. Certain levels of protection for affected employees were agreed upon including seven major areas of protection:

1. A requirement that any railroad contemplating coordination, which is defined as joint action by two or more carriers to unify, consolidate, merge or pool total or portions of railroad facilities owned or operated by those railroads, post a notice to employees ninety days in advance, containing a full statement of the proposed coordination action including an estimate of the number of employees of each class that would be affected by the intended change.

2. A five-year protective period for employees involved in a particular coordination who are continued in service.

3. Wage protection during the protected period in the form of displacement allowances based upon test period earnings.[1]

4. Coordination allowances for those deprived of employment equaling sixty percent of average monthly compensation for a period of six months to five years depending on length of service.[2]

[1] Displacement Allowance—Washington Agreement: Each displacement allowance will be based on an average monthly allowance derived by computing the average monthly compensation and time paid over the last 12 months that the services of the employees were provided, immediately preceding the date of displacement. In determining a month's applicability, any service provided in a month makes that month eligible for inclusion in calculation. The monthly average calculated will be considered the minimum pay that the displaced employee shall earn. If any smaller amount is earned, the difference in displacement allowance will be paid. The maximum length of time for a displacement allowance is 5 years.

[2] Coordination Allowance—Washington Agreement: The coordination allowance will be based on 60 percent of the average monthly income the employee earned in the immediately preceding 12 months. The length of time for payment of the coordination allowance is determined and limited by the following schedule:

Less than 1 year: One lump sum payment equivalent to 60 days pay at the straight time daily rate of the last position held by the employee.
1 year and less than 2: 6 months.
2 years and less than 3: 12 months.
3 years and less than 5: 18 months.
5 years and less than 10: 36 months.
10 years and less than 15: 48 months.
15 years and over: 60 months.

5. An option to elect separation pay in lieu of the coordination allowance.[1]

6. Maintenance of benefits.

7. Reimbursement for relocation expenses, including losses from home sale.

There were two important limitations contained in the Washington Job Protection Agreement. First, eligibility for benefits was expressly "restricted to those changes in employment in the railroad industry solely due to and resulting from such coordination". Second, coordination was defined to mean "joint action by two or more carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities."

The Washington Job Protection Agreement soon became the standard for the Commission to use in approving mergers or consolidations. By 1939, the Supreme Court upheld the imposition of labor protection by the Interstate Commerce Commission using its "public interest standard" contained in the 1920 Transportation Act for a lease application between two bankrupt railroads. (*United States v. Lowden, Trustee of the Estate of the Chicago, Rock Island and Pacific Railway Company*, 308 U.S. 225,[1] 1939.) Shortly thereafter the Supreme Court upheld the imposition of "public interest" protective conditions in abandonments in *ICC v. Railway Labor Association*, 315 U.S. 373[2] (1942).

Meanwhile, Congress in the Transportation Act of 1940 added section 5(2)(f) to the Interstate Commerce Act.[3] It required as a condition to the grant of a merger, consolidation or acquisition, that labor protection be imposed for a period of four years from the effective date of the transaction. In the *Railway Labor Association* case, the Supreme Court noted that the effect of the 1940 amendments was to make mandatory the protection of workers, which had been discretionary under the Washington Job Protection Agreement. Thereafter, the ICC utilizing the Washington Job Protection Agreement as a basis, developed a series of "standard" employee protections which were more or less routinely adopted.

THE OKLAHOMA CONDITIONS

In May of 1944, the Interstate Commerce Commission issued an order that is referred to as the "Oklahoma Conditions". The *Oklahoma Railway Trustees Abandonment*, 257 ICC 177 (1944), was the first "standard" set of protective conditions. It included:

1. A monthly displacement allowance, if the employee was displaced into a worse position with the carrier as a result of the approved transaction, which generally insured the employee of monthly

[1] Separation Allowance—Washington Agreement: If the separation allowance is chosen, lump sum payments will be paid according to the following schedule:
Less than 1 year: Five days pay at rate of last position occupied for each month in which services were performed.
1 year and less than 2: 3 months pay.
2 years and less than 3: 6 months pay.
3 years and less than 5: 9 months pay.
5 years and less than 10: 12 months pay.
10 years and less than 15: 12 months pay.
15 years and over: 12 months pay.

[3] See amended text of section 5(2)(f) as contained in the discussion of The 4 R Act Amendments.

1. 60 S.Ct. 248, 84 L.Ed. 208.
2. 62 S.Ct. 717, 86 L.Ed. 904.

compensation no less than his average monthly compensation during the twelve months prior to his displacement;

2. A monthly dismissal allowance, if the employee was deprived of all employment by the carrier as a result of the transaction, which generally insured the employee a monthly compensation (after allowing for compensation from other sources) no less than his average monthly compensation during the twelve months prior to such deprivation of employment;

3. Protection of fringe benefits;

4. Reimbursement of certain moving expenses and wage loss if the employee is required to change his place of employment as a result of the transaction;

5. Arbitration of disputes; and

6. Reimbursement of certain losses on sale of his home by an employee forced to move to a new residence as a result of the transaction.

The protective period during which those protections could apply was limited to four years from the effective date of the Commission's order approving the transaction, but not to exceed the period for which the particular employee was employed by the carrier prior to that date.

Two features of the Washington Job Protection Agreement were not included in the *Oklahoma Conditions*: (1) Ninety day notice of an intention coordination, and, if the plan of coordination would result in the displacement of employees or a rearrangement of forces, the assignment of employees would be settled by an implementing agreement between the carriers and unions involved, or by arbitration if they could not agree; and (2) an authorization to dismiss employees who elect to receive a lump sum payment in lieu of all other protections.

The *Oklahoma Conditions* were imposed as recently as 1978 in trackage rights and lease cases: *Mendocino Coast Railway—Lease Operate*, 354 ICC 732 (1978); *Norfolk and Western Railway Company—Trackage Rights—BN*, 354 ICC 605 (1978).

THE NEW ORLEANS PASSENGER TERMINAL CASE

The next important case setting forth "standard" conditions arose in *New Orleans Union Passenger Terminal Case*, 282 ICC 271 (1952).

The conditions were a blend of the *Oklahoma Conditions* and the Washington Job Protection Agreement with minor changes. In particular a provision was added requiring any income derived from employment in other than the railroad industry shall be offset against the coordination allowance being paid by a specific proportion. Thereafter in the *Southern Railway Company—Control—Central of Georgia Railway Company*, 317 ICC 557 (1962), clarified 317 ICC 729 (1963) and 331 ICC 151, 161 (1967), minor changes were made to the *New Orleans Conditions* and to the *Oklahoma Conditions*.

Abandonments, while not covered by section 5(2)(f), received labor protection conditions first adopted in *Chicago, R&O Railroad Company. Abandonment*, 257 ICC 700 (1944). These conditions were in substance identical to the *Oklahoma Conditions*.

THE 4-R ACT AMENDMENTS

Congress by a 4-R Act amendment added a sentence to section 5(2)(f). The amended 5(2)(f) read as follows:

"As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. Its de order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carrier by railroads affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. *Such arrangement shall contain provisions no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to Section 405 of the Rail Passenger Service Act (45 U.S.C. 563).* Notwithstanding any other provision of this Act, an agreement pertaining to protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees." (New 4R Act material in italic)

Abandonments were given similar treatment by section 802 of the 4-R Act. Both were recodified as 49 USC 11347.

The Rail Passenger Service Act of 1970, referred to by the 4-R Act Amendments, had in section 405 provided a statutory outline for protective employee conditions. Benefits could be no less than those provided by section 5(2)(f) of the Interstate Commerce Act. The Secretary of Labor was required to certify that Amtrak's labor protection agreements met this standard. In fact, the conditions Amtrak negotiated went far beyond those that the ICC had opposed in four significant aspects:

1. The maximum protective period was extended from four to six years from the date on which a protected employee was displaced.

2. Monthly compensation guarantees created by displacement and dismissal allowances were escalated with general wage increases.

3. Once an employee came forward alleging that he had been affected by a transaction, the burden was on the carrier to show the employee had not been affected.

4. Priority rights to employment in other crafts or classes in training or retraining rights were established.

The Amtrak Conditions also provided that twenty days notice of an intended transaction was required but that implementation could take place even without an agreement. Duplication or pyramiding of benefits were prohibited.

The ICC first considered the effect of the 4-R Act Amendments in *Mo Pac-Merger-T&P, C&EI*, 318 ICC 414 (1976). It concluded, "that Congress did not intend to have the Commission significantly change its policy in this area." (At page 427). It conditioned approval upon the *New Orleans Conditions* as modified by the *Amtrak Conditions*.

NEW YORK DOCK CONDITIONS

New York Dock Railways' application to acquire the Brooklyn Eastern District Terminal was a small merger case, yet the ICC chose this as the vehicle to address the minimum labor protective conditions required in mergers, consolidations, and acquisitions. New York Dock Railway—Control—Brooklyn Eastern District, 360 ICC 60 (1979). Labor organizations had petitioned that the labor protective conditions imposed in this case become the minimum standard in all subsequent mergers, acquisitions, or controls. The determination that New York Dock's protective conditions were a matter of general transportation importance occurred after the initial decision approving the application had imposed the New Orleans Conditions as modified by the Amtrak Conditions. In reviewing the newly fashioned New York Dock Conditions, the Court of Appeals used these words to describe them: "In overall effect, the single 'New York Dock Conditions' can be fairly characterized as significantly more protective of the interests of railway labor than any previously imposed single set of employee protective conditions." *New York Dock Railway Company* v. *U.S.*, F. 2d, (Second Cir. 1979).

The ICC imposed the most beneficial protective conditions of both *New Orleans* and *Amtrak* and made three major changes not contained in either:

1. It accepted the Railway Labor Executives Association's substitute definition of "transaction" for the Washington Job Protection Agreement's "coordination". Transaction was defined to mean: "any action taken pursuant to authorizations of the Commission on which the protective provisions were imposed."

2. It required that no change in operations, services, facilities or equipment shall occur "until after notice, negotiations, agreement or binding arbitration."

3. It deleted the Amtrak provision that prevented an employee from selecting only the best portions of *New York Dock* and the best portions contained in other contractual agreements. Duplication of benefits was no longer clearly prohibited.

These three changes raise issues of interpretation and application that have not yet been resolved.

Appeals were rejected in *New York Dock Railway* v. *U.S.*, F. 2d (Second Cir. 1979). The Court held the ICC acted within its discretion in fashioning protective benefits beyond the minimum required by law. The Court, however, noted problems arose because of the definition of transaction as well as the language concerning benefit selection.

As recently as December 14, 1979, the ICC has held that these are minimum protective conditions it will impose and chose not to clarify the language mentioned by the Court. On that occasion it reopened the *Missouri Pacific Railroad Company—Merger—T&P, C&EI*, Financial Docket Number 27773, reversed itself and imposed *New York Dock Conditions*. Similar conditions were required in abandonments: *Oregon Shortline Railroad Company—Abandonment—Goshen*, 360 ICC 91 (1979).

THE MILWAUKEE AND ROCK ISLAND CONDITIONS

Failing railroads and the resulting effect on employment which would not necessarily be covered by either existing collective bargaining agreements or the Interstate Commerce Act focused more attention on job protection for railroad employees. The first example was the law granting almost complete income protection for Conrail's employees with an alternative of severance pay. Since the 250 million dollars appropriated for Conrail's employees proved inadequate, a more tailored approach was developed for the Milwaukee employees. This is set forth in the Milwaukee Railroad Restructuring Act of 1979. It provided federal assistance to pay benefits to Milwaukee employees who were adversely affected by the restructuring in the following areas:

1. 80 percent of base income protection for up to 3 years
2. Supplemental unemployment benefits
3. Moving expenses and sale-of-home benefits
4. Separation allowance
5. Preferential hiring within the industry
6. Retraining

The basic protection plan of the law was spelled out in an agreement between the Milwaukee Road and the labor organizations representing its employees on December 14, 1979.

The circumstances of the Rock Island bankruptcy were different from those of the Milwaukee, but the impact on employees was similar, and an agreement was reached on March 4, 1980, between various railroads and the labor organizations representing Rock Island employees to provide for preferential hiring of Rock Island employees and monetary protection patterned after the Milwaukee Act with certain exceptions. The agreement also covers Milwaukee employees hired by carriers acquiring segments of its lines. The following describes the major components of the agreement:

1. Carriers acquiring Rock Island or Milwaukee trackage will give preference in hiring to employees of the 2 lines to fill its needs.

2. Employees so hired will have monetary protection of 80 percent of base income for up to 3 years.

3. The labor agreements of the acquiring carrier will apply to the acquired lines.

4. Issues involving seniority of new hires will be resolved by agreement or if necessary by arbitration.

5. Moving expenses are not provided.

6. Separation pay is not an option.

7. Employees not hired have no protection provided by the acquiring carrier.

8. The protection of the agreement is the total protection available to the hired employees. It satisfies the requirements of the Interstate Commerce Act.

Legislation to provide protection similar to that in the Milwaukee law for employees of Rock Island who are not hired by a purchasing carrier is pending. The March 4, 1980, hiring agreement is already being carried out on several carriers which have been granted temporary operating authority on Rock Island lines by the ICC.

* * * * * * * * *

ADDITIONAL VIEWS OF HON. TOBY MOFFETT

I fully support title VII of the Rail Act of 1980 relating to supplemental transactions. Of particular interest to me is the provision within title VII to carry out the orderly transfer of Conrail properties in my own State of Connecticut and in Rhode Island.

In both of these States, Conrail has classified all of the lines it runs as branch lines, and the boxcar operations, which make up a majority of the freight traffic in Connecticut and Rhode Island, are losing operations for Conrail. In addition, a recent U.S.R.A./New England regional commission study found, based on 1977 data, that Conrail would have reduced its deficit by $9 million by not operating in Connecticut, Rhode Island, and southeastern Massachusetts.

For these reasons, it is appropriate that this legislation develop a procedure for transfer of Conrail lines in the two States. This bill provides that within 180 days of its enactment, the Secretary must hold a hearing to entertain proposals for acquisition of Connecticut and Rhode Island Conrail properties. In that same 180-day period, the Secretary must evaluate the proposals to see if any meet the criteria set out in this bill. If there are any such proposals, the Secretary is charged with developing them.

Key to this proposal and transfer procedure are the criteria set out in the act. Any railroad coming forward with a proposal must demonstrate that it can take over all the lines in Connecticut and Rhode Island, that it can do so with no Federal subsidy and that it has the financial capability to run the lines.

I am satisfied that these provisions will give us the procedural tools needed to accomplish an expedited transfer of rail lines in Connecticut and Rhode Island. I commend the staff and members both of the subcommittee and full committee for their support and cooperation in adopting this section of the bill.

TOBY MOFFETT.

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SEPARATE VIEWS OF HON. JOHN E. DINGELL AND BOB ECKHARDT

The Rail Act of 1980, H.R. 7235, falls short of providing an equitable framework for regulatory reform of the Nation's railroad system.

One of the most objectionable sections in H.R. 7235 is Section 301, which is captioned "joint rate relief" and is intended to solve indirectly a problem which the major railroads are unwilling to settle directly, *viz.*, equitable divisions of joint rates on through routes among the participating railroads. Instead of resolving this problem directly and rationally, this section would resolve the issue by the strategems of either loading additional charges on shippers where they have no competitive alternatives or by eliminating competitive routes with selected connecting railroads. Either way, this section as written into the bill would sanction the exploitation of monopoly traffic by large railroads among shippers and among connection railroads, and a "big stick" approach to resolving of equities as between large and small railroads.

Surcharges.—The present pattern of regulated joint rates in the nation embodies two concepts, *viz.*, reasonableness and non-discrimination. With these safeguards in place, the existing rate structure has been constructed so as to guarantee all shippers relatively reasonable rates, in the sense that the same amount of money buys an equivalent amount of transportation for the same product throughout the country. And it has also protected one railroad customer from another who might otherwise be given preferential rates and the consequent competitive advantage in a given marketplace.

The surcharge provision of this section would change all that. If one railroad is accorded inequitably low divisions by its connections, that can be "rectified" by the imposition of surcharges on its shippers by that railroad. Even if the total charges then collected from the surcharged shipper are thus raised to an unreasonable level, he is remediless to obtain protection under the law. This is because Section 301 specifies that in the case of a surcharge the Commission will be precluded from even examining whether the total freight charges incurred are unreasonable. Thus, Section 301 is a curious solution indeed. It provides that a carrier who is treated inequitably by its railroad brother may remedy that injustice by imposing an unreasonable rate upon its shipper customer. This would be like passing a law to license anyone who is swindled out of a sum of money to go out and swindle someone else out of an equivalent amount with impunity. Even the frequently maligned concept of "an eye for an eye" conceives that the eye taken should be that of the protagonist and not that of an innocent bystander.

And this is not even the worst feature of the surcharge provision as written into Section 301. It provides rather clearly that a shipper may object to a surcharge if the surcharging carrier's present revenue

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division is 110 percent or more of its variable cost. This conjures up an image of rationality, because when the carrier is receiving less than the 110 percent "trigger" it is obviously not being overcompensated for its services. But what has been missed by a quick reading of this provision is that there is no "cap" on the surcharge. For example, if the putative surcharging carrier's cost is $100 and its present revenue division is $109, then it falls within the trigger provision in Section 301. But what if that railroad publishes a surcharge of $101, bringing its share of the revenue up to $210, *i.e.*, $100 above 110 percent of its variable cost? Section 301, purposefully or not, would leave the shipper with no protection whatsoever against such unlimited exploitation. So long as the "trigger" of 109 percent of costs is met by the existing division of revenue, the surcharging carrier is given an unlimited carte blanche to make an excessive surcharge, and the shipper is bereft of even a right to complain about it under Section 301. This is a clear loophole in the bill which exists and will be abused by the larger railroads.

Two other discrepancies as to surcharges in Section 301 are also worth noting. The limited right to protest surcharges is given only to "shippers". Many of those most injured by Conrail's recent rounds of illegal surcharges were receivers and not shippers. Nor are communities, associations, ports, *etc.*, accorded any right to object to

excessive surcharges. Also, the protection accorded shippers under Section 301 is stated to be that the "shipper . . . may cancel the application of such surcharge". The publication and cancellation of railroad tariffs, including surcharges, is in the hands of railroads, not shippers. There is no practical way that a shipper can "cancel" a surcharge. It is not his tariff and the publishing agent works for the railroads, not the shippers.

Section 301 would also create a whole new category of second class citizens, shippers and receivers located on branch lines. Those shippers have already been subjected to poorer car supply and more sporadic service than shippers on main lines. Now the machinery for the *coup de grace* would be handed to the railroads whereby they could surcharge branch lines where their divisions do not equal 110 percent of variable cost plus "100 percent of such carrier's reasonably expected costs of continuing to operate such line." Note that this is a much higher standard which branch lines must meet to avoid surcharges than would be applicable to main lines. There is no reason for this. It has been hard enough for shippers on branch lines to stay alive without putting up a new and inequitable obstacle for them to meet.

Cancellation of routes with connections.—Section 301 would remove the present test which the cancelling carrier must meet, *i.e.*, that it is in the public interest, and instead place a burden on the injured connecting carrier to show that the cancelling carrier's revenue division equals or exceeds 110 percent of its own costs or that the cancelling carrier earns a lower division/cost ratio over another route not being cancelled. The cancelling carrier is proposing to take an anticompetitive action by cancelling its route with a targeted connecting carrier. Yet it is the victim who would be saddled with the burden of proof in order to avert the anticompetitive action. And the proof which it is mandated that the victimized carrier must produce is the cost of

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the cancelling carrier, a matter peculiarly within the control of the cancelling carrier to produce.

Thus, while Section 301 purports to provide a semblance of protection for the connecting carriers, in reality it is so contrived as to leave them virtually helpless. To add to the anticompetitive potential of Section 301, the Bill would also cripple the anti-discrimination provision of the Interstate Commerce Act by providing in Section 208 that any discrimination practiced through cancellation of joint routes shall not be subject to the protection of the Interstate Commerce Act.

Typically, it is anticipated that this new "right" to selectively cancel joint routes with connections would be used by a large railroad, such as Conrail, against certain smaller railroads. Section 301 even facilitates this by turning the relative inefficiency of a particular large carrier against its more efficient connections. For subsection (i), Section 301, provides that the costs against which the 110 percent test shall be measured is the system average cost of the cancelling carrier and not the average cost of all carriers operating in the same railroad region. This means that even though when measured against the regional average cost the cancelling carrier's present division is 125 percent of such cost, such carrier can still cancel the joint route if its

own costs are so inefficient as to produce a revenue/cost ratio of 109 percent. It would canonize inefficiency and reward it at the expense of the more efficient connecting railroad.

The bias in Section 301 against smaller railroads is also obvious from the nature of the limited protection it offers to connecting railroads when faced with a prospective route cancellation. It would allow a connecting railroad to preclude the cancellation if it could increase the cancelling carrier's revenue division to 110 percent. But, in the case of a relatively small railroad with a haul of 200 miles or less (such as the Green Bay and Western and the Detroit and Toledo Shore) out of a transcontinental movement of 3,000 miles, there is no way that they could make up the full slack in Conrail's transcontinental divisions, even if they gave up their entire division and took nothing. On the other hand, a major railroad with a long haul of 1,500 or 2,000 miles could readily give up some of its division and frustrate the cancellation.

During consideration of the bill, the Committee adopted an amendment offered by Mr. Lee which would allow Class III short line railroads the right to bring a complaint to the Commission provided that the surcharge or rate cancellation has an adverse effect on competition or where a surcharge or rate cancellation affects the sole remaining route available to the Class III carrier and either alternative transportation is available or a shipper dependent upon the Class III carrier will suffer significant market loss or the surcharge is likely to impair a carrier's ability to earn an adequate rate of return.

The Lee Amendment provides inadequate protection to Class III short line railroads and completely fails to extend its very limited protections to medium sized Class II short line carriers. There are only 18 Class II railroads in the nation and none of them are large enough to be a serious threat to the viability of any major railroad. Yet they typically are important as regional railroads, such as the Maine Central, Green Bay and Western, and the Detroit and Toledo Shore, and

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as such are vital to their areas of the nation. To the extent that they handle a substantial amount of business in long haul services, they provide significant options to accommodate the nation's freight and their earnings therefrom are vital to the support of these regional roads. The vital importance of these essential carriers must be considered as a framework for stronger protection for Class III short line carriers is constructed. The failure to adequately protect the economic viability of all short line railroads is a serious flaw in the bill.

JOHN D. DINGELL.
BOB ECKHARDT.

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SEPARATE VIEWS TO THE REPORT OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE ON H.R. 7235, THE RAIL ACT OF 1980

Some of us dissented from the majority of the committee on the vote to report this bill. Others felt that the bill, having a number of desir-

able features, should be reported within the May 15 deadline and that it could be perfected on the floor. But all of us felt that the oppressive rate treatment of captive shippers by a dominant carrier allowed by Section 202 of the bill permits abuse of monopoly power.

We are filing our views in disagreement with the ratemaking provisions of this legislation because we believe that they create many more problems than they solve. We certainly share the Committee majority's concern about reforming federal railroad regulation to assist ailing rail carriers. However, the formulation embraced by this legislation will, we believe, not accomplish that purpose. Instead, the bill deregulates rates in many cases where competition is not available to protect shippers and consumers from excessive rate increases. This easy access to higher rates removes the carriers' incentives to increase the efficiency of their operations.

Moreover, the Rail Act will allow shipping rates to rise indiscriminately for both those railroads who need additional revenues and for those who do not. The legislation will impose dramatic rate increases on shippers who have no alternative means of transporting their goods, thereby placing an enormous inflationary load on American consumers who are already overburdened by an annual inflation rate of 18 percent. The adverse effects of this legislation will be felt in all regions of the country and by consumers of all types of commodities, particularly bulk commodities such as grain, coal, steel, automobile parts, and chemicals which are particularly suited for rail transport.

In addition, the Rail Act will significantly add to the current rate of energy inflation. Domestic coal supplies present one of the most important alternatives available to reduce the economy's dependence on imported energy and to check the inflationary spiral threatening our nation. Yet this bill will allow coal-hauling railroads to exploit their market power almost unchecked, converting potential consumer savings from our domestic energy supply into monopoly profits.

The legislation reported by the Committee will result in severe economic consequences because it will virtually eliminate rate regulation in markets controlled by a railroad monopoly or cartel. In 1976, Congress deregulated rates in competitive markets, overturning more than half a century of regulatory policies. The Congress, however, retained rate regulation in noncompetitive markets on the ground that "where effective competition does not exist, regulation to protect against abuse of market power must be and is retained." The Rail Act of 1980, however, proceeds to deregulate rates in most of these areas where marketplace forces are inadequate to protect shippers from excessive rates.

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It is argued that this second deregulation effort will result in consumer benefits in the same manner as is presumed to flow from truck and airline deregulation. But the proponents of this argument fail to note that deregulation of competitive railroad markets was already accomplished in 1976 and that they are now proposing deregulation in many monopoly markets. Moreover, the railroad, trucking, and airline industries are far from parallel because of physical differences. The fact that railroad cars can run only on expensive tracks owned by individual railroads means that barriers to entry are formidable

and that the railroads, unlike motor and air carriers, frequently do not face effective competition. Further, because rail is the only feasible means for many commodities to travel, there is often no truck, barge or pipeline alternative to noncompetitive rail transport.

Supporters of this provision have sought to justify it on the basis of the weak financial condition of certain rail carriers. But we believe this bill does not address the railroads' admitted difficulties in a way that is likely to be productive either for the railroads or for the shippers and consumers of the goods moved by rail.

The legislation does not differentiate between those railroads which are financially healthy and those in need of assistance. By failing to direct the added revenues to marginal carriers, windfall profits will accrue to many carriers that are and have been generating handsome profits under the current regulatory system. This approach will impose unnecessary burdens on many domestic industries shipping by rail which are already in serious financial distress. It is wholly unwise and unfair to place needless costs on severely troubled industries, such as automobiles and steel, and to cause great increases in food prices, utility rates, housing costs and costs of other goods and services essential to our domestic economy while providing ever increasing profits to the wealthier railroads.

Moreover, the bill encourages railroads to raise rates on captive traffic rather than to minimize unnecessary costs or to increase freight traffic through more effective pricing and marketing strategies. As a result, the inefficiencies inherent in the present rail transportation system will continue well into the future and the costs of these inefficiencies will become added deadweight in the national economy.

Obstacles to ICC rate review in noncompetitive markets

The heart of our objections lies in Section 202 of the proposed legislation, which repeals the "market dominance" test of existing law and establishes a new jurisdictional test. The "market dominance" test was established under the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act), and this test limits rate review to circumstances where there is "an absence of effective competition from other carriers or modes . . . for the transportation to which a rate applies." (49 U.S.C.A. § 10709).

Thus, under current law, before the Interstate Commerce Commission may find that a proposed rate is unjust or unreasonable, it must first determine that the proponent railroad has "market dominance" over the service to which the rate applies. If market dominance is found, the ICC applies its "just and reasonable" standard to the challenged rate. If market dominance is not found, the Commission lacks jurisdiction to scrutinize the reasonableness of the proposed rate.

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The Rail Act of 1980 goes farther than the 4-R Act, unwisely we believe. It removes ICC rate protection against exorbitant rate increases in noncompetitive markets by substituting a new jurisdictional test for the "market dominance" criterion. Under the Committee bill, two onerous requirements must be met before the ICC can exercise any review over a rate or rate increase.

The first test is based on the revenue-to-variable cost (rate-to-variable cost) ratio of the traffic. If a rate yields a ratio less than the

"cost recovery percentage" defined by the bill, then the ICC may not review it. During Committee discussion, the proponents of this provision stated that the "cost recovery percentage" would be approximately 200 percent. Hence, any rate which yields revenues of less than two times the variable cost of providing the transportation could not be reviewed.

To understand how onerous this test is for shippers and consumers, one must understand that although the 4-R Act did not set any particular rate level as a jurisdictional threshold, the ICC in applying the law has established a threshold of 160 percent of variable cost as one of its presumptions of "market dominance." In short, Section 202 raises by 40 percentage points the level established by the ICC as an appropriate standard for providing rate review.

The economic result of this change is staggering. Under the 160 percent ICC-determined level of presumed "market dominance, a carrier is already 10 percent to 15 percent above the level at which it is receiving a reasonable profit on the haulage in question. That is, the rate for that haul is already substantially subsidizing its other (competitive) traffic. This represents, on average, a return on equity after taxes of 21.96 percent (40.67 percent before taxes), and an after-tax return on net investment of 16.08 percent. In comparison, using the bill's threshold level of 200 percent, a carrier would earn after-tax returns on equity of 45.39 percent (83.99 percent before taxes), and an after-tax return on net investment of 30.1 percent. (See Appendix A.)

It should be emphasized that the 200 percent level is a threshold. It is the lowest level at which ICC review can even be had. Thus, many rates could be expected to rise significantly above the 200 percent level before they would be found "unreasonable."

This "cost recovery percentage," however, is only the first barrier to rate review. Even if a rate exceeds this extremely high level, a shipper is denied the protection of ICC rate review unless an "actual or present potential transportation alternative" does not exist.

In contrast to the 4-R Act, the proposed legislation bars ICC rate review if so-called "geographic competition" is found to exist. Thus, the Commission cannot scrutinize the reasonableness of a rate if a shipper is able to obtain the commodity from another source at a delivered cost which is not substantially greater than the cost of the rail transported commodity. This test is extremely complicated to administer, thereby undercutting regulatory reform objectives. Moreover, this test imposes severe obstacles to review of rate increases, even for rates which yield more than two times the variable cost of providing the transportation. Under this criterion, it is possible that importing foreign goods could be a viable transportation alternative—precluding ICC review.

As an illustration of this potential, we cite the case of Central Power & Light of Corpus Christi, which is actively considering the purchase of coal from South Africa for future coal-fired powerplants rather than buying domestic coal. In this instance, rail rates on coal shipments from Colorado have been allowed to increase to such an extent that the delivered price of South African coal is lower than the delivered price of Colorado coal.[3]

[1] Variable costs are expenses, such as fuel costs, which fluctuate with the volume of traffic handled.

Conflicts with other railroad policies

It is clear from the discussion above that the rate provisions do not provide adequate protection to the captive shipper. Moreover, they undercut effective implementation of other rail policies, such as increased rail-to-rail competition and long-term contracts, which have been described as providing additional protection in noncompetitive market situations.

Ironically, the Committee voted to report this bill and remove review of rates subject to monopoly abuse on the very day that two of the largest competing western railroads announced their intention to merge. The merger announcement on May 15 by the Santa Fe and the Southern Pacific, which serve essentially the same markets from Southern California through Louisiana, coupled with proposed and consummated mergers of other major eastern and western rail carriers, greatly diminish the potential for competitive restraints on rates.

Proponents of the rate-making provisions also argue that adequate protection will be afforded to captive shippers by section 201, the contract rate provision. Section 201 would provide, for the first time, clear statutory authority for shippers and carriers to enter into long-term rail rate and service agreements. Such contracts would be of immense value to the railroads, of course, for they would be assured of long-term sources of revenues. In addition, these contracts could be used to secure future financing. Shippers, for their part, would know over the long term the cost and quality of their rail service. For these reasons, both carriers and shippers have long emphasized the value of a contract provision such as Section 201.

Unfortunately, the maximum rate provisions will most probably render the contract provision a nullity as a protection to the captive shipper. With respect to such traffic, there are few incentives for a carrier with monopoly power to enter into a contract that might restrict its rate when it knows it can raise rates by 10% per year in addition to inflation.

Adverse impacts on national economic and energy policies

During the Committee's deliberations and the extensive study of coal rates by the Subcommittee on Oversight and Investigations,[1] there has been considerable discussion about the definition of captive (noncompetitive) traffic. The Committee's bill, H.R. 7235, concludes that most rail transportation is competitive, and its rate regulation provisions are based on this finding.

We strongly disagree with this premise. Bulk commodities such as steel, grain, coal, lumber and building materials and automobile parts are almost totally dependent on the rail transportation system. Most chemicals and hazardous materials are captive to rail because safety considerations preclude transport by trucks.[2]

The question of appropriate rates for the transportation of coal has received particular attention in the last several years. In a number of

[1] See ch. V. and VI, "Railroad Coal Rates and Public Participation: Oversight of ICC Decisionmaking," Report by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, 96th Congress, 2d session, Committee Print 96-IFC 40, pp. 99-101.

[2] See "Railroad Coal Rates and Public Participation: Oversight of ICC Decisionmaking," Report by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, 96th Congress, 2d session, Committee Print 96-IFC 40, pp. 89-91.

recent cases, the ICC has set the maximum reasonable level for coal rates at between 165 percent and 175 percent of variable cost. The Subcommittee on Oversight and Investigations has found that the current treatment of those rates by the ICC places an unreasonable share of the subsidy to meet carrier revenue needs on coal. Moreover, the Department of Energy has urged that the high rate levels involved in these cases jeopardize attainment of national energy goals.

While there is good reason to believe that the ICC-established coal transportation rates are too high, H.R. 7235 would result in staggering increases in these already highly profitable rates by prohibiting ICC review until after such rates exceed 200 percent of variable cost. The increased cost of coal transportation to public utilities and other major coal consumers such as the steel industry will approximate $385 million per year or more than $3 billion by 1990 at a minimum (at 1977 traffic levels.) It is little comfort that the bill would phase this mammoth increase in by limiting increases in the first few years to 10 percent plus inflation—that could still come to 25 percent per year.

The impact on consumers from these rate increases will be drastic. In essence, there will be an unjustified transfer of money from the electric consumers and purchasers of manufactured goods to the railroads—including many wealthy carriers. Given the rapidly escalating prices for energy and the central role that energy plays in overall inflation, the deregulation of coal freight rates under H.R. 7235 will be particularly harmful to the consumer. The Consumer Energy Council has stated, "The impact on the consumer of an unregulated railroad industry trying to solve all of its financial problems by extracting maximum advantage from its monopoly control over coal hauling would be staggering."

Captive rail shippers of many other vital commodities would also be adversely affected. For example, while the President just last week expressed "deep concern" about the automobile industry's "serious problems" and pledged a "new cooperative spirit" to assist that industry, this bill will cause the auto industry to pay additional rail transportation costs of $225 million per year. The cost to the steel industry, which faces tremendous competition from abroad, could exceed $230 million per year. And grain shippers can expect an additional rail transportation cost in excess of $110 million per year.

Thus, a conservative estimate demonstrates that the ratemaking provisions of the Rail Act will impose an inflationary burden on the American economy of one billion nine hundred and forty-three thousand dollars per year.

[1] Thus, according to the ranking minority member of the Interstate and Foreign Commerce Committee, the ranking minority member of the Subcommittee on Oversight and Investigations, and two other minority members of the full committee, "chemicals have no feasible alternative." Separate Views to Report of the Subcommittee on Oversight and Investigations referred to in note 2

Effect of House bill on captive traffic by major industry groups[1]

[Added Yearly Freight Charges]

Industry:	In millions
Coal	$383
Steel	233
Automobiles	225
Lumber	190
Chemicals	170
Paper	150
Grains	142
Fertilizers	111
Others	321
Total	1,993

[1] Figures were derived by extracting traffic by industry category from the underlying data in the T. A. Kearney Report prepared for the ICC ("A Study to Perform an In Depth Analysis of Market Dominance and Its Relationship to Other Provisions of the 4–R Act"). This was further categorized by selecting rates with a revenue to variable cost ratio of 140 percent to 200 percent. Then a calculation was made of the revenues necessary to bring all rates up to the 200 percent "cost recovery percentage" level.

Conclusions

The economic and energy consequences of this legislation make it imperative that H.R. 7235 be amended to continue rate review where competition is lacking.

To achieve the goals we all seek and to do so in a manner equitable to all parties, we prefer the Senate bill's approach to maximum rate regulation. The Senate system sets a threshold equal to the average rate level which the rail industry must earn in order to enjoy adequate revenues. Rates below this level would not be subject to rate regulation. Above that threshold, carriers would be entitled to recover their inflation costs without any possibility of shipper challenge nor to implement additional rate increases without the possibility of suspension. Depending on the amount of the increase, the carrier or the shipper would have the burden of showing the reasonableness or unreasonableness of a rate or rate increases.

We believe that the House of Representatives should carefully review the momentous and dangerous decision made by the Committee to move deregulation beyond the area covered in the 4–R Act (the area where there is competition) into the area where railroads enjoy a virtual monopoly position. This is an invitation to the railroads to abuse their market power. The impact on shippers and receivers of major commodities and the inflationary impact on consumers, as well as the implications for our coal utilization efforts, will be staggering unless H.R. 7235 is corrected.

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APPENDIX A

Revenue/variable cost ratios [1]	Return on net investment after taxes [2]	Return on equity after taxes [3]	Return on net investment before taxes	Return equity before taxes
140 percent	9.06	10.26	14.3	19.05
150 percent	12.57	16.11	20.8	29.83
160 percent	16.08	21.96	27.3	40.67
170 percent	19.59	27.81	33.8	51.5
180 percent	23.1	33.66	40.3	62.33
190 percent	26.6	39.51	46.8	73.16
195 percent	28.36	42.43	50.05	78.58
200 percent	30.11	45.36	53.3	83.99
205 percent	31.87	48.28	56.55	89.4
210 percent	33.62	51.21	59.8	94.81
220 percent	37.13	57.06	66.3	105.64

[1] Variable costs including cost of capital based on embedded interest rates.
[2] Based on statutory tax rate.
[3] Computed on basis of 40/60 percent debt/equity ratio and embedded debt rate of 7.25 percent (Ex parte No. 361 finding). Before tax return times 0.54

Source: Underlying work papers ICC Statement ICI-77.

Bob Eckhardt.
Tony Moffett.
Albert Gore, Jr.
Tom Loeffler.
John Dingell.
James M. Collins.
John M. Murphy.
Mickey Leland.

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SEPARATE VIEWS OF HON. JOHN M. MURPHY

This bill, popularly known as the rail de-regulation bill, represents an effort to improve the condition of our nation's railroads, but Section 301 of the bill dealing with joint rates is self-defeating, in my view, and threatens irretrievable harm to small and medium-sized railroads and the shippers, receivers, States, communities and ports they serve. I propose to offer amendments which I believe are better calculated to achieve the stated goals of this bill while protecting against the mischief I foresee if it should become law in its present form.

De-regulation is no panacea for the transportation industry, and de-regulation which may be appropriate elsewhere can be devastating in the case of railroads. Unlike aircraft, trucks and ships which can move when and where they will, rail cars can move only where there are tracks to carry them. Since 70 percent of all rail traffic is interlined, according to the testimony of the Chairman of the Interstate Commerce Commission at the hearings on this legislation, railroads are uniquely interdependent and must cooperate if we are to have an efficient national rail network in the private sector which it is the stated purpose of this bill to foster.

I

Historically, connecting carriers on a through route have published tariffs prescribing joint rates for particular movements, and have di-

vided the revenues on the basis of various factors, such as cost, length of haul and so forth, by agreement, or where they fail to agree, as prescribed by the I.C.C.

Section 301 of this bill, however, for the first time would permit a carrier unilaterally to impose a surcharge on a joint rate or to cancel a joint rate on a through route, free of the prohibitions against unreasonable discrimination which it has from the beginning been a principal purpose of the original Interstate Commerce Act to prevent. Section 301 provides only limited recourse to the I.C.C. by other participating carriers and shippers and no recourse at all for receivers, States, communities or ports which may be adversely affected.

The stated purpose of this drastic departure is to improve the depressed earnings of the rail industry in general and Conrail in particular, and to obviate the need for further federal subsidies—an objective which every member of this House will applaud.

But the unilateral surcharges and join rate cancellations which Section 301 proposes are the wrong remedy, in my view. As Mr. Fishwick, the President of the Norfolk and Western, pointed out at the hearings on this bill, the effect will be to foist ConRail's inflated costs on the rest of the already depressed rail industry and on captive customers and communities who have no transportation alternative.

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ConRail is not necessarily to blame for its excessive costs. It inherited dilapidated track, deteriorated equipment and high labor costs from its bankrupt predecessors.

But Section 301 provides no incentive for Conrail to cut its inflated costs which are the crux of the problem. So long as Conrail can show that under its existing division of a joint rate, it is not receiving 110 percent of its variable costs, unilateral surcharges and joint rate cancellations cannot be disturbed, even if they result in unreasonable discrimination against its connecting carriers or the shippers, receivers, States, communities or ports affected. There should be some incentive for efficiency if the massive public investment in Conrail is ever to be recouped.

It is said that a railroad should not be required to carry traffic at rates below its break-even point. Section 301 would authorized surcharges far beyond that point; 110 percent of variable cost is a floor, but not a ceiling. In any case, I cannot agree to a proposed solution which fails to provide any incentive to reduce costs and instead permits a carrier to resort to unilateral self-help to increase its share of limited revenues at the expense of its connections.

Conrail's large line-haul connections, many of which recently reported large profits last year, may be able to absorb some of Conrail's inflated costs through reduced divisions or through higher joint rates when the traffic will not be driven away. But small or mid-sized railroads will not be able to absorb Conrail's excessive costs. Conrail's extra-territorial connections, therefore, would have the power, by absorbing Conrail's surcharge and rate cancellations selectively, to determine which traffic would be retained and which would be driven away, and therefore which of the small and midsized carriers would survive.

Moreover, Conrail has had a solution to its problem of excessive costs via divisions cases under existing law for the four years last past, since it came into being. Last year, I am informed Conrail reported a loss

of $192 million and it handled 5 million cars. It would have had a modest profit with additional revenue of $40 per car. I am further informed, moreover, that Conrail originated and terminated 60 percent of the traffic on its own lines where rate increases would not require the concurrence of connecting carriers.

As to the remaining 40 percent of Conrail's traffic which is interlined, the amendment which I propose to offer would substitute for the unilateral surcharges and joint rate cancellations which section 301 of the House bill would authorize, the provisions for "Expeditious Divisions of Revenue" contained in section 107 of the Senate bill, S. 1946. Under my amendment, the Interstate Commerce Commission must complete evidentiary proceedings to adjust the division of joint rates between the participating carriers within 9 months after a complaint is filed, and 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 involved, the Commission must give the proceeding preference over all other proceedings and take final action within 180 days after the evidentiary proceedings have been completed.

Conrail could thus obtain compensatory joint rate relief within 1 year, under my amendment, for the 40 percent of its traffic which is

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interlined where an impartial public tribunal, the I.C.C., finds the relief is justified. The same would be true of any other carrier. I believe this approach is far preferable to the unprecedented, unilateral self-help which section 301 would authorize in its present form.

The text of my amendment is attached, together with a list of the carriers, organizations, corporations and trade unions which have expressed their support.

In a divisions case, under 49 U.S.C. § 10705(b), "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".

If Conrail's difficulties still persist after expeditious division proceedings, its problems will have been defined on the record made before the Commission and the Congress can then tailor a remedy to fit the actual facts. This seems a wiser course than giving carte blanche, not only to Conrail, but also the big line-haul railroads.

I should add that the record shows an immediate increase in rates available to the rail industry of $1.5 billion resulting from surcharges under section 301. The ripple effect throughout the economy will be many times greater. The House should realize that it is being asked to approve a highly inflationary piece of legislation.

Finally, the rail industry is characterized by high fixed costs which can only be amortized by handling a large volume of the traffic. The surcharges and higher joint rates envisioned by section 301 of this bill will inevitably tend to drive away some traffic. The big line-haul carriers may be able in many cases to absorb such a loss of business, but the small and mid-sized carriers often may not survive such a loss of volume. In those cases, the shippers, receivers and communities they serve will become victims as well.

A copy of my amendment is attached together with a list of the carriers, shipper organizations, ports and labor unions which have expressed their support.

II

In a commendable effort to afford a measure of protection to short line and terminal railroads, the Committee adopted an amendment to section 301 offered by the gentleman from New York (Mr. Lee) to give Class III short line and terminal carriers access to the Commission on a showing that a surcharge or rate cancellation "will have an adverse effect on competition" or where a surcharge or cancellation affects the sole remaining route available to the Class III carrier for that traffic and either alternative transportation is available, or a shipper dependent upon the Class III carrier will suffer significant market loss, or the surcharge is likely to unduly impair a carrier's ability to earn an adequate rate of return.

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While welcome indeed, so far as it goes, the Committee amendment would not protect midsized Class II and small Class I carriers similarly situated. Moreover, I am not at all sure what is meant by "an adverse effect on competition" or "anti-competitive."

Accordingly, I plan to support an antitrust amendment to section 301, borrowing from the familiar language of the Clayton Act, to provide that it shall be unlawful for any carrier to apply a surcharge or to cancel the application of a joint rate to a through route where the purpose or effect of such surcharge or cancellation may be substantially to lessen competition or tend to create a monopoly in any line of commerce in any section of the country or to injure, destroy or prevent competition with any person. This antitrust amendment should further prescribe the traditional antitrust remedies of treble damages and injunctive relief.

If rail rates are to be deregulated, then the discipline of competition is needed to protect the public interests. Accordingly, the usual applicability of the antitrust laws should be reaffirmed to preserve a free market and to prevent restraint of trade and abuse of monopoly power.

III

As I have already noted, it has long been a principal purpose of the Interstate Commerce Act to prevent unreasonable discrimination in rail rates and predatory competitive practices—a purpose restated only 4 years ago in section 202(1) of the 4R Act of 1976 which brought Conrail into being.

This provision is rooted in the Constitution, for the framers plainly believed that "in order to form a more perfect union", there should be no impediment to the free flow of commerce among the original

thirteen States on the Atlantic Coast, or the new States they envisioned in the hinterlands. Accordingly, Congress was given power "to regulate commerce * * * among the several States.' Further the framers imposed certain prohibitions on the exercise of Federal and State power to assure the free flow of commerce among the States, including the provision that "No Tax or Duty shall be laid on articles exported among the several States";' "No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another;' and the Export-Import Clause: "No State shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the Net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress".' Congress followed these provisions of the Constitution in forbidding unreasonable discrimination in interstate rail rates. Indeed, this bill would eliminate State regulation of intrastate rail rates in the interest of uniformity.

' Art. I, § 8, cl. 3
' Art. I, § 9, cl. 6
' Art. I, § 10, cl. 2
' Art. I, § 9, cl. 5

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Section 208(f) of this bill, however, would exempt from this long-standing prohibition against unreasonable rate discrimination, the unilateral surcharges which Section 301 would authorize for at least 3 years. The primary purpose of that portion of Section 301, as I have said, is to enable Conrail to recoup its excessive costs at the expense of its connections or to drive away the business if its connections cannot afford to absorb Conrail's excessive costs.

I do not believe however that Conrail's difficulties can or should be alleviated by authorizing surcharges which are unreasonably discriminatory, in utter disregard of the long-standing ban on unreasonable discrimination which was reaffirmed by the Congress only four short years ago.

At the appropriate time, therefore, I propose to offer an amendment which would simply preserve the long-standing prohibition against unreasonable discrimination to the extraordinary surcharges proposed by this bill. I do not believe that this House seriously intends to legalize unreasonable discrimination.

IV

Finally, I plan to offer an amendment to give full force and effect to the amendment requiring the Commission to guarantee the equalization of rates within the same port which I proposed and Congress adopted as Section 202(f)(4) of the 4R Act of 1976, now recodified at 49 U.S.C. § 10711.

As I have just noted, Article I, Section 9, Clause 6 of the Constitution provides that "No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another", and my amendment to the 4R Act was designed to require continued conformity to that Constitutional command.

As Chairman of the Committee on Merchant Marine and Fisheries, I have held hearings on port problems—including rail service—at ports all around the continental United States. At every port except the Port of New York which I represent, rail rates are equalized because there is competitive rail service. In the Port of New York, however, where Conrail has a virtual monopoly, rail rates are not uniform and surcharges prevail to New York points in the Port, particularly to the new container port at Howland Hook in my district, where ironically, the rail facilities were constructed with a $2,000,000 grant from the Federal Government. The result is to discriminate against the U.S.-flag ocean carriers which are committed to Howland Hook, and in favor of their foreign-flag competitors who use the facilities on the New Jersey shore and enjoy lower rail rates.

The Commission, however, has been advised by its Rail Services Planning Office to treat my recent amendment to the 4R Act as of "questionable substantive effect". This too is ironic, since the Commission, as recently as 1978 in the *Soft Forms* case, 357 I.C.C. 502, 570-571, recognized that "The tradition of rate uniformity began shortly after the first rail lines into New York were constructed."

My amendment would simply place on the Commission the affirmative duty to see to it that existing law is enforced and port parity is ensured.

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AMENDMENT OFFERED BY MR. MURPHY

On page 26 strike line 3 and all that follows through page 32 line 16 and insert in lieu thereof the following:

SEC. 301. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(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 the 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 proceeding 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 paragraph, 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 subparagraph, it must report its reasons to Congress.".

LIST OF SUPPORTERS OF AMENDMENT TO SUBSTITUTE SECTION 107 OF SENATE BILL FOR SECTION 201 OF THE HOUSE BILL

National Industrial Traffic League
American Farm Bureau Federation
Soo Line Railroad Co.
National Coal Association
Edison Electrical Institute
Gulf Ports Association (15 ports from Florida to Texas)
Delaware and Hudson Railway Co.
Chemical Manufacturers Association
Florida East Coast Railway Co.
Grain and Feed Association of Illinois (1104 grain elevator operators)
Southern Hardwood Traffic Association
National Small Shipments Traffic Conference
Greenbay and Western Railroad
SCM Corporation, Cleveland, Ohio
Western Coal Traffic League
Packaging Corporation of America
Sandersville Railroad Co.
Trans-Kentucky Transportation Systems, Inc.
Drug and Toilet Preparation Traffic Conference
New York Dock Railway
Corinth and Counce Railroad
Hartford and Slocum Railroad
McCloud River Railway
Ahnapee and Western Railway
Alden Corrugated Container Corp.

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J. & J. Corrugated Box Corp.
Farm and Industrial Equipment Institute
Apalachicola Northern Railroad
Winifrede Railroad
Middletown and Hummeltown Railroad
Association of Independent Corrugated Converters
Wilamina and Grande Ronde Railroad Co.
Octarara Railroad Co.
Eastern Industrial Traffic League
International Longshoremen's Association
Port of New York, New York
Port of Boston, Massachusetts
Port of Philadelphia, Pa.
Port of Norfolk, Va.
Port of Wilmington, N.C.
Port of Charleston, S.C.
Port of Savannah, Ga.
Port of Jacksonville, Fla.
Gulf Ports Association
Port of Brownsville, Tex.
Port of Corpus Christi, Tex.
Port of Freeport, Tex.
Port of Houston, Tex.

Port of Point Comfort, Tex.
Port of Galveston, Tex.
Port of Port Arthur, Tex.
Port of Beaumont, Tex.
Port of Orange, Tex.
Port of Lake Charles, Tex.
Port of New Orleans, La.
Port of Gulfport, Miss.
Port of Biloxi, Miss.
Port of Pascagoula, Miss.
Port of Mobile, Ala.
Port of Pennsacola, Fla.
Port of Panama City, Fla.
Port of Port Manatee, Fla.
Port of Tampa, Fla.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 20, 1980.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee, Washington, D.C.

DEAR MR. CHAIRMAN. Enclosed please find separate views we wish to submit to accompany the Committee Report on the Rail Act of 1980.

Thank you for your consideration in this matter and with kind regards, we are

Sincerely,

JOHN M. MURPHY.
ANDREW MAGUIRE.
BOB ECKHARDT.
RICHARD SHELBY.
NORMAN F. LENT.
JAMES H. SCHEUER.

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SEPARATE VIEWS, EXCLUSIVE FEDERAL JURISDICTION OVER INTRASTATE RATES

Section 210 of H.R. 7235 would give the ICC exclusive jurisdiction to prescribe intrastate rates for rail carriers which are otherwise subject to the ICC's interstate jurisdiction. In one stroke, the majority of the Committee would sweep aside established principles of Federal-State relationships and would mandate an unprecedented degree of intrusion of Federal authority into the primary jurisdiction of the States.

The States have exercised jurisdiction over intrastate railroad rates for over 100 years and have provided a forum for addressing the concerns of small shippers and all consumers. The State agencies are more accessible and convenient to consumers than is the ICC.

The Interstate Commerce Act presently provides a rational and practical system for accommodating the interests of shippers, rail carriers, the States and the Federal Government. First of all, the ICC can nullify State regulation of a rail carrier (including a rate) if the

Commission finds that the State's action unreasonably discriminates against or burdens interstate commerce. Secondly, the ICC is given exclusive jurisdiction over an intrastate rate which has been filed with a State agency for the purpose of adjusting the rate to the level of the interstate rate on similar traffic, if the State agency does not act within 120 days.

The basic argument given by the majority in favor of ousting the States from their traditional jurisdiction is that States are likely to hold down intrastate rates as opposed to interstate rates, thereby requiring interstate shippers to foot the bill for the railroads. Putting aside the question whether State regulatory agencies are in fact likely to do this—and the related issue of whether this means simply that State agencies are more sensitive than the ICC to the real balance of equities in ratemaking—there is a fundamental fallacy in this argument. The fallacy is that there is a perfectly adequate remedy for this potential problem under current law.

Moreover, if State regulatory agencies were in fact doing what the proponents of exclusive Federal jurisdiction allege, there would be a flood of ICC cases filed by the railroads seeking to raise intrastate rates to interstate levels. In fact, during 1979, only 12 such cases were filed and the ICC granted the relief requested in 11 of these.

One of the basic purposes of H.R. 7235 is to assist in the rehabilitation and financing of the Nation's rail systems. If there were clear evidence that continued primary State jurisdiction over intrastate rail rates were having a seriously deleterious effect on the financial stability of the Nation's railroads there might be some justification for the action of the Committee's Majority. Evidence presented to the Committee by the National Association of Regulatory Utility Commissioners, composed of State agencies engaged in regulation of rail rates

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and safety, demonstrates that continued State jurisdiction over intrastate rail rates is of no major economic significance to the railroad industry. The intrastate increases from the 11 cases decided by the ICC in 1979 generated less than $10 million in additional carrier revenues, which is negligible compared to the over $3 billion in general rail rate increases granted by the ICC in 1979.

The majority's recommendation is an ill-conceived attempt to sweep aside a Federal-State relationship which is functioning effectively in the public interest. There has been no showing of the need for exclusive Federal jurisdiction over intrastate rail rates. The majority's recommendation fails to comply with constitutional principles of our Federal system, and indeed there is a serious question as to the authority of Congress to enact Section 210.

The National Association of Regulatory Utility Commissioners urged the Committee to delete Section 210 from the bill and a motion to do was narrowly defeated by a vote of 20 to 17. We urge the House to delete this section from the bill.

PHIL GRAMM.
DAVE STOCKMAN.
RICHARD SHELBY.
JIM SANTINI.
BOB ECKHARDT.
DAVID E. SATTERFIELD.

SEPARATE VIEWS OF TOM LOEFFLER

The separate views set forth above which I join in with my colleagues describe in general terms the critical defects in the provisions in the bill reported by the Committee dealing with rate regulation by the Interstate Commerce Commission. As the representative of a district whose citizens have already been sorely, and I believe unjustly, burdened by excessive increases in freight rates for the rail transportation of coal, I would like to stress the inequities which would result under the Committee's bill with a very concrete example.

Several years ago, our municipally-owned utility in San Antonio constructed its first coal fired electric generating station which now supplies approximately 50 percent of the city's electrical power requirements. Since the city began moving coal to this new facility in 1976, the railroads have sought and obtained from the Interstate Commerce Commission increases in the applicable freight rates totalling over 84 percent. As a result of these increases, the annual transportation bill has risen from roughly $32 million to roughly $60 million.

The rates which the city is currently paying for the transportation of its coal are extremely profitable to the railroads involved. These rates cover not only all the costs to the carriers of providing the service plus a full return on all their involved investments equal to the current cost of capital, but also contain a further increment which the I.C.C. has allowed to cross-subsidize the movement of less profitable commodities.

Under the jurisdictional standard established in the Committee's bill, San Antonio would be exposed to huge additional rate increases on its coal traffic. The cost recovery percentage standard, which is projected to be approximately 200 percent of variable costs, far exceeds the ratio for the railroads' current and extremely profitable rate of roughly 174 percent. As a result, the annual transportation costs to San Antonio could be increased by roughly $14 million per year. It must be emphasized that every dollar of this increase would be additional profit on a coal movement which already earns the carriers approximately $21 million per year over and above their variable costs of service.

The additional transportation costs to San Antonio over the life of its plant could exceed $380 million. The carrier primarily involved, the Burlington Northern, is recognized to be a financially solid and profitable railroad at the present time. Equally important, however, the BN will reap tremendous profits from the additional volumes of coal which it will be hauling in the coming years.

Even after the San Antonio rate exceeded the cost recovery percentage, the second prong of the bill's dual jurisdictional test might well preclude it from obtaining I.C.C. rate review. This second requirement, that there be no actual or "present potential" transportation

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alternative is very vague and could result in rate review being denied on the basis of such circumstances as the possible future construction of coal slurry lines or the availability of foreign coals.

San Antonio is, of course, only one of thousands of shippers who are captive to the railroads and who are essentially defenseless to predatory rate demands by the railroads in th absence of I.C.C. rate regulations. I am firmly opposed to the bill reported by the Committee because of its failure to afford any meaningful protection to such shippers, and I urge each of my colleagues in the House of Representatives to consider carefully the impact the bill would have on captive shippers and to vote against the measure unless it is amended in a manner which would offer such shippers adequate rate protection.

TOM LOEFFLER.

HOUSE CONFERENCE REPORT NO. 96-1430

* * * * * * * * *

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the text of the bill (S. 1946) to reform the economic regulation of railroads, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate amendment to the House amendment struck out all of the House amendment and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the Senate amendment and the House amendment. The differences between the Senate amendment, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SUMMARY AND DESCRIPTION

SECTION 1—SHORT TITLE

Section 1 states that this bill may be cited as the "Staggers Rail Act of 1980".

SECTION II—FINDINGS

The Conferees find that historically the enactment of the Interstate Commerce Act was essential to prevent an abuse of monopoly

power by railroads and to maintain a national railroad network as an essential part of the national transportation system. However, today, most transportation is competitive and many of the Government regulations affecting railroads have become unnecessary and inefficient. Nearly two-thirds of intercity freight is transported by modes of transportation other than railroads. Earnings by the railroad industry are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvements. By 1985, the railroad industry will experience a capital shortfall of between $16 billion and $20 billion. The industry's failure to achieve increased earnings will result in either further deterioration of the rail system or the need for additional Federal subsidy. Modernization of economic regulation of railroads, with greater reliance on the marketplace, is essential to achieve maximum utilization of railroads, to save energy and to combat inflation.

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SECTION III—GOALS

The specific goals of this Act are to assist the industry in the rehabilitation and financing of the rail system; to reform Federal Regulation to preserve a safe, adequate, economical, efficient and financially stable rail system, to assist the rail system to remain viable in the private sector of the economy; and to provide a regulatory process that balances the needs of carriers, shippers, and the public. The overall purpose of the Act is to provide, through financial assistance and freedom from unnecessary regulation, the opportunity for railroads to obtain adequate earnings to restore, maintain and improve their physical facilities while achieving the financial stability of the national rail system.

Title I—Rail Transportation Policy

Title I of the Conference substitute sets forth the congressional declaration of policy for railroads by adding a new section 10101a to the Interstate Commerce Act. The new section establishes a specific rail transportation policy to guide the Commission in its duties in regulation of the railroad industry. The Conferees intend that this policy include the encouragement and promotion of the transportation of coal by rail in accordance with the objective of energy independence at rates which do not exceed a reasonable maximum where there is an absence of effective competition.

Title II—Railroad Rates and Inter-Carrier Practices

Title II is related to the key areas of the Interstate Commerce Act which involve railroad rates and inter-carrier practices. In general, the title assures railroads substantially more rate freedom than is afforded them under existing law. It continues the policy started under the Railroad Revitalization and Regulatory Reform Act of 1976 of substantially eliminating rate regulation of railroads where there is effective competition. The title also affirmatively encourages railroads to use new marketing practices by permitting contracts between carriers and shippers; permissive limited liability rates; business entertainment expenses; efficient marketing

through faster implementation of rates, and premium charges to encourage better car utilization

A number of provisions are included to foster greater competition by simplifying coordination, minor mergers procedures, entry and reciprocal switching agreements. Moreover, the Commission is given the mandate to place greater emphasis on the need for carriers to have adequate revenue levels. Among other tools given the Commission for this purpose is the ability to determine the effects of inflation and to assure carriers the opportunity to recover inflation.

Specifically, Title II provides the Interstate Commerce Commission with jurisdiction to determine rate reasonableness only when a rail carrier has market dominance and the rate exceeds the applicable revenue-variable cost percentage threshold. The revenue-variable cost percentage is a level below which the Commission has no jurisdiction over the reasonableness of maximum rates. This codifies and refines the practice followed by the Commission for determining market dominance on, among other matters, the relationship of revenue to variable cost.

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For four years beginning October 1, 1980 and until October 1, 1984, there is a rate flexibility zone of 6 percent, subject to a cumulative total of 18 percent, in addition to inflation. If an portion of the 6 percent rate increase is not implemented in a year in which it is authorized, it may be carried over to the succeeding year. However, within the four year period no carrier can take an increase within the flexibility zone in excess of 12 percent in any one except that in the first year the zone is limited to 6 percent. If any portion of the 18 percent cumulative rate increase is not taken by October 1, 1984, it may be carried over to the next two succeeding years, with the limitation of an annual increase of 10 percent between October 1, 1984 and October 1, 1986.

Effective October 1, 1984, and in succeeding years thereafter, a carrier may annually implement a 4 percent increase, which may not be carried over in subsequent years.

The 4 percent zone is not available to increase single-line rates of carriers with adequate revenues. The Commission is to promulgate regulations in connection with joint-line movements involving both carriers with adequate revenues and carriers with inadequate revenues.

When determining the reasonableness of rates, the Commission is to recognize the policy that rail carriers shall earn adequate revenues. This title also authorizes carriers to increase a rate to cover cost increases due to inflation.

The rate of a carrier in effect upon enactment of this Act may be challenged before the Commission during the 180-day period following enactment on the basis that the carrier has market dominance over the transportation to which the rate applies. If the rate is not challenged during the 180-day period, or is found to be lawful, the rate may not be challenged thereafter. This provision does not apply to rates for volumes of traffic in the past year of under 500 net tons and which has increased tenfold in the three years prior to the challenge. The burden of proof under this section is with the complainant.

In order to encourage more effective marketing by railroads the notice period for rate increases is lowered from 30 days to 20 days and from 30 days to 10 days for rate decreases.

The Commission is required to maintain, and revise as necessary, standards and procedures for determining revenue adequacy. On the basis of the standards, the Commission is to determine within 180 days of the effective date of this Act and annually, thereafter, which carriers are earning adequate revenues.

The Commission may prescribe, on a quarterly basis, a percentage rate increase or rate index for rail carriers to compensate for inflationary cost increases. Within 60 days after the Commission prescribes such percentage rate increase or index, rail carriers intending to be excluded from such percentage rate increase or index, shall notify the Commission, and all carriers participating in a particular route must agree to be excluded for the exclusion to be effective. The percentage rate index may include percentage increases within a specified range to allow carriers to recover a total increase specified by the Commission as necessary to compensate for inflationary cost increases.

The Commission must complete an investigation or suspension proceeding concerning a rate, classification, rule or practice within

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5 months, or 8 months if it reports to Congress. The Commission may not suspend a proposed rate, classification, rule or practice if a protestant is likely to prevail on the merits, substantial injury will result without the suspension, and because of the peculiar economic circumstances of the protestant precluded protection of the protestant by means of a refund if the rate is later found unreasonable by the Commission.

This title authorizes one or more carriers to enter into contracts with one or more shippers unless the Commission finds that the proposed contract unduly impairs the ability of the contract carrier(s) to meet their common carrier obligation or unreasonable discriminates against a port. In the case of agricultural commodities (including forest products and paper), a complaint may be filed on the grounds that a carrier has unreasonably discriminated by refusing to provide the complainant a similar contract under similar conditions or that the proposed contract constitutes a destructive competitive practice.

Once a contract has been approved, the Commission cannot require a carrier to violate its terms except under the Commission's emergency powers. The exclusive remedy for a breach of contract is an action in a State or U.S. district court unless the parties otherwise agree.

Demand sensitive rates under Section 10724 of title 49 U.S.C. are repealed.

Capital incentive rates under Section 10729 of title 49 U.S.C. are repealed except that capital incentive rates prior to enactment of this Act shall remain in effect no longer than five years, unless the parties otherwise agree.

To provide both shippers and railroads with greater rate-service options the Act permits the establishment of lesser liability requirements than presently assured by law. Such liability limitations are available only if the shipper agrees to them.

To permit use of the new provisions available to both shippers and railroads, Section 10741 of title 49 U.S.C. is amended by exempting certain services from the rate discrimination provision in current law. Exempted are certain contracts, surcharges and cancellations, separate rates for distinct services, rail rates applicable to different routes or business expenses authorized under section 10751 of this title. These exemptions do not affect existing prohibitions against discrimination between ports or within the same port.

The bill authorizes a carrier to surcharge or cancel a joint rate when the existing joint rate does not provide the carrier with 110 percent of its variable cost. Other carriers may prevent the surcharge or cancellation from becoming effective, however, by adjusting the division of revenues of proposing a new rate which brings the surcharging or cancelling carrier's revenues up to 110 percent. Alternatively, a shipper or carrier can reduce to the 110 pecent level a surcharge which would provide the surcharging carrier with revenues greater than 110 percent of variable cost, and can prevent a joint rate from being cancelled by providing a surcharge in lieu of cancellation which would bring the revenues of the cancelling carrier to 110 percent of its variable cost. Such a reduced surcharge or surcharge in lieu of cancellation of a joint rate is to be imposed

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by the Commission in conformity with the petition of the protesting shipper or carrier.

In addition a class III railroad may obtain review by the Commission of either a surcharge or cancellation if the surcharge or cancellation will have an adverse effect on the ability of a class III railroad to compete effectively, or if it will affect the class III railroad's last available route for a particular movement and produce certain adverse results for the class III railroad, or it it will adversely affect the competitive position of a shipper or receiver located on the class III railroad. In making its review, the Commission shall act to prevent anticompetitive surcharges or cancellations which affect class III railroads, and the Commission is given authority to preserve service on the route participated in by the class III railroad. The Commission may rescind the surcharge or cancellation and may require the surcharging or cancelling carrier to carry the traffic at less than 110 percent of its variable costs if necessary to preserve competition or service by the class III railroad which is required by the public interest.

The conferees note that nothing in the bill's protections reduces the availability of the Federal antitrust laws to protect against improper use of the surcharge or cancellation provisions. A rail rate to which a surcharge is applied shall constitute a rate increase for the purpose of section 10701a and 10709 of title 49, United States Code. An expedited division of revenue procedure is also established.

A similar below cost service problem occurs with respect to light density lines. That problem, however, relates more to shippers on a particular line than to inter-carrier relationships. The bill institutes the use of branchline surcharges on any lines carrying less than 3 million gross tons per year. (1 million gross tons for carriers with adequate revenues).

State authority over intrastate transportaton is limited to administering the provisions of the Interstate Commerce Act. Within 120 days of the effective date of this Act, State authorities must submit to the Commission standards and procedures to be used in exercising such jurisdiction. With 90 days of the receipt of the State's filing, the Commission shall certify the State's compliance with the regulations and procedures of this Act. States are precluded from authority over general rate increases, inflation–based rate increases and fuel adjustment surcharges.

In order to encourage competitive pricing, no rail carrier is permitted to discuss single line rates proposed by another carrier, except for the purposes of general rate increases and broad tariff changes. No rail carrier may discuss a joint line rate unless it practicably participates in that movement. After January 1, 1984 (or earlier if the Commission decides), no carrier may discuss a joint line rate where there are two or more routes between the same end points, except with a carrier that forms part of a particular single route. If the Commission finds that implementation of the section is not feasible, it may delay or suspend implementation in whole or in part.

Transcripts or sound recordings and records of votes are to be available to the Commission and other Federal agencies.

The Commission shall require protective conditions for rate bureau employees.

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Competition is encouraged by permitting entry by a rail carrier, through new construction, if public convenience and necessity permit or require it. Where the Commission has authorized construction or extension of a line, no other railroad may refuse to permit the carrier to cross its property if the construction or operation does not interfere with the operation of the crossed line and the owner of the crossing line compensates the owner of the crossed line. The Commission may require protective conditions for the employees affected by new construction.

The Commission may require reciprocal switching where practicable and in the public interest or where such agreements are necessary to provide competitive rail service. The Commission may establish conditions and compensation where carriers are unable to agree within a reasonable time. The Commission may require that reciprocal switching agreements include labor protection provisions.

This title repeals existing incentive per diem provisions. The Commission is authorized to grant shippers antitrust immunity to conduct negotiations with carriers regarding charges for rolling stock owned or leased by such shippers. The participants have the right to petition the Commission to set compensation at a reasonable level, if the parties cannot agree.

In order to encourage more efficient car utilization, carriers are permitted to charge for special services or special levels of service not otherwise included in any tariff applicable to the movement.

For transactions that do not involve the merger or control of at least two Class I railroads, the Commission is required to approve an application unless it finds there is a likelihood of substantially lessening competition, creation of a monopoly or restraint of trade

and the anticompetitive effects of the transaction outweigh the public interest.

The application of the Elkins Act to business expenses by rail carriers and motor carriers is clarified by treating these businesses as all other businesses.

Finally the Commission is given exemption authority if regulation is not necessary to carry out the Railroad Transportation Policy and protect shippers from market abuse.

Title III—Railroad Cost Determinations

Previous accounting and reporting systems developed by the Commission for rail carriers are to be replaced by the accounting and reporting requirements of Title III of this bill. There is established a Railroad Accounting Principles Board for the purpose of developing cost accounting principles which identify variable costs which accurately represent the most accurate costs of rail movements.

The Board shall exist for three years. Within two years, it shall issue cost determination principles necessary for regulatory purposes which shall identify accurate costs. The principles are to apply to the entire railroad industry to ensure consistency in railroad cost accounting practices.

Each rail carrier is to maintain a system that is in compliance with the rules promulgated under Section 11163 of this title and are required to make cost data available to shippers, states, ports,

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communities and other interested parties that are party to a Commission proceeding.

Title IV—Railroad Modernization Assistance

This title continues the existing redeemable preference share financing program.

The Secretary must report to Congress within 90 days after the end of each fiscal year specifying how each grant or loan contributes to the goal of providing a safe and efficient rail system.

A new feeder railroad development program is established which gives shippers the opportunity to acquire a rail line carrying less than 3,000,000 gross tons a year if the railroad is not providing adequate service. After the third year any rail line may be acquired under this provision. The Commission must make certain findings before any acquisition can take place and the rail carrier must be given compensation for selling the line.

New time limits are established for considering abandonment applications. Applications for abandonment which are not opposed would be granted within 45 days, and the abandonment would occur within 75 days. With respect to unopposed applications, this would basically codify existing ICC practice. For applications which are opposed, ICC decisions would be reached much more quickly than under present law, and the ICC would be required to process and decide such cases within 9 months. No changes are made in the substantive abandonment standards.

The low interest redeemable preference share program under section 505 of the 4R Act is extended for two years. An additional $700 million is authorized for the program, and of that amount

$200 million shall be transferred to the United States Railway Association for use by Conrail in reducing the size of its workforce.

Section 211(i) the Regional Rail Reorganization Act is also amended to make available to railroads in addition to Conrail loan guarantees for the purpose of electrifying high density mainlines or for other capital improvements to achieve the goals to the national energy policy.

Finally, section 211(d) the Regional Rail Reorganization Act of 1973 is amended to extend the time period from December 31, 1980 to December 31, 1981 to permit the United States Railway Association to continue to act on loan modifications this provision and increases the principal amount of a loan made under Section 211(d) from $4 million to $7.5 million.

Title V—Conrail Title V Labor Protection

Section 501 changes the formula for calculating monthly guarantees for non-operating employees, maintenance-of-way employees and operating employees. No change is proposed in the guarantee formula currently applicable to non-contract employees and employees who have been transferred.

Section 502 would restrict the payment of the MDA in two situations. First, a protected employee's entitlement to an MDA would be suspended for the period that the employee fails to work for reasons beyond the control of his or her current employer due to strikes, floods, snowstorms, and similar occurrences. Second, the legislation would require a protected employee to claim an MDA within three months of entitlement and would require that entitle-

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ment to claims be resolved within 150 days after a claim is filed for the first year and 90 days thereafter. This provision will eliminate bookkeeping problems caused by procrastination in filing a claim for an MDA, and enable the Corporation to assess more accurately expected payments for labor protection.

In addition, this legislation would clarify that the period of protection for a protected employee with less than 5 years of service begins to run from the beginning of the first month for which the employees receives an MDA.

Subsection 505(d) of the current law sets out transfer procedures by which the Corporation may require a protected employee deprived of employment to transfer to a bona fide vacancy within the employee's class or craft.

Section 503 addresses restrictions on manpower utilization by including employees in the marine crafts and unemployed Penn Truck Lines, Inc. truck drivers in the provisions permitting transfer of adversely affected employees to another class, and by offering retraining programs to make the interclass transfer provision meaningful. In addition, the Corporation can make use of an expedited multiple offer procedure to Penn Truck Line and marine craft employees.

Section 504 would redesignate section 509 of the 3–R Act as section 509(a) and increase the amount of funds authorized to be appropriated under title V by $235 million to a new authorization level of $485 million make training and retraining costs incurred

by the Corporation under revised section 505(d)(4)(D) reimbursable costs, and confirm existing practice whereby title V funds are used to reimburse the Railroad Retirement Board's unemployment compensation paid to protected employees.

An additional $235 million is authorized to fund the substantially reduced level of benefits afforded by these amendments. This sum would fund the program during a transition period, after which the carriers employing protected employees would be responsible for the payment of benefits without reimbursement.

In addition, this section would add two new subsections to section 509 that impose auditing and reporting responsibilities upon the Association. Section 509(b) would direct the Association to conduct a program audit of the payment of benefits under title V and evaluate the effectiveness of the provisions of Title V in providing a reasonable level of protection to protected employees and enabling the Corporation to improve management of the protected employees in the workforce. The Association would be afforded access to pertinent documents for the purpose of facilitating its audit and evaluation functions. Section 509(c) would require the Association to transmit an annual detailed and comprehensive report of its periodic audit and evaluation to the Congress and the President within 90 days after the end of each fiscal year.

Section 505 gives Conrail employees the right of first hire on other railroads.

Section 506 requires the single collective bargaining agreements be negotiated with each class and craft and that such negotiations be conducted on a system wide basis.

Section 507 would make the new formulas provided by this title effective August 1, 1980, as already required by a recent Supplemental Appropriations bill, Public Law 96-304.

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Section 508 makes certain technical amendments.

Title VI—Expedited Supplemental Transaction Proposals

Section 305 of the Regional Rail Reorganization Act of 1973 is changed by requiring that within the 240 days after the effective date of this Act the Secretary shall determine whether to initiate a proposal for the transfer of all Conrail properties in Connecticut and Rhode Island to another rail carrier in the region. The Secretary shall develop such proposal if the proposed transferee railroad is financially and operationally capable of assuming freight obligations on a financially self-sustaining basis and the transfer would promote a financially self-sustaining rail system in Connecticut and Rhode Island.

The Secretary shall establish a fair and equitable price for proposed transfers. If the special court determines that the proposal is fair and equitable and meets the other requirements of this section, it shall issue order to carry out the proposal.

The parties to a supplemental transaction under this section and the representatives of the affected employees are to enter into a new agreement.

Title VII—Miscellaneous Provisions

Title VII of the Conference substitute includes provisions related to effective dates, status of pending matters and construction of amendments. In addition, the title provides the annual authorization for the United States Railway Association and funds for Conrail.

Specific provisions are also included to clarify or remedy legislation enacted early this year related to the Rock Island and Milwaukee Railroads.

SHORT TITLE

Senate bill.—The Senate bill has as a short title "Railroad Transportation Policy Act of 1979".

House amendment.—The House amendment has as a short title "Harley O. Staggers Rail Act of 1980".

Conference substitute.—adopts the "Staggers Rail Act of 1980" as the short title of the Act.

FINDINGS

Senate bill.—The Senate bill has no findings.

House amendment.—The house amendment has findings which provide an overview of the need for legislation. Among other considerations stated are findings that today, most transportation within the United States is competitive, nearly two-thirds of intercity freight is transported by modes other than railroads, earnings of railroads are insufficient to generate funds for necessary capital improvements, by 1985 there will be a capital shortfall of between $16 billion and $20 billion and that modernization of economic regulation for the railroad industry with a greater reliance on the marketplace is essential in order to achieve maximum utilization or railroads to save energy and combat inflation.

Conference substitute.—The House amendment.

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Senate bill.—The Senate bill has no statement of goals except as included in the railroad transportation.

House amendment.—The House amendment sets forth specific overall goals to provide for the restoration, maintenance, and improvement of the physical facilities and financial stability of the rail system of the United States.

Conference substitute.—The House amendment.

TITLE I

RAILROAD TRANSPORTATION POLICY

Senate bill.—The Senate bill adds an independent railroad transportation policy to the Interstate Commerce Act to guide the Commission in formulating its rules, regulation, and divisions arising from its administration of the Act.

House amendment.—The House amendment is similar to the Senate provision but puts a greater emphasis on the need to minimize Federal regulatory control over railroads.

Conference substitute.—Adopts the House amendment with additional policy considerations taken from the Senate bill.

Title II—Railroad Rates and Inter-Carrier Practices

SECTION 201—REGULATION OF RAILROAD RATES

Senate bill.—The Senate bill provides that a rail carrier may establish any rate which yields a revenue to variable cost ratio that is equal to or less than the average ratio of revenue to variable costs established by the Commission. It sets out standards to be used by the Commission in establishing the average ratio and establishes timeframes for action under this section.

House amendment.—Section 203 of the House amendment provides that rail carriers may establish any rate for transportation or other services provided by rail carriers unless a rail carrier has market dominance over the traffic. It establishes which parties shall have the burden of proof in complaint and investigation proceedings to challenge the lawfulness of rates or rate increases. The House amendment requires the Commission in determining the reasonableness of rates, to recognize the policy that rail carriers must earn adequate revenues.

Conference substitute.—The Conference substitute adopts the House amendment with various changes to conform it to the Senate bill. It allows a rail carrier to establish any rate for transportation unless a rail carrier has market dominance over the transportation, in which case the rate must be reasonable. The definition of market dominance under existing law has not been altered by the substitute, and it is not intended that there be any change in the meaning of the term, nor is any change intended in the Commission's authority to determine market dominance and reasonableness concurrently. However, since other parts of the Conference substitute provide additional rate freedom for rail carriers beyond those found in present law or under existing or proposed Commission regulations, the Commission must revise its market dominance regulations.

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In maintaining the term market dominance, in addition to statutory changes designed to provide more rate freedom to rail carriers, the Conferees intend that whenever there is effective competition which will restrain rate increases by the railroads, such competition should continue to function as the regulator of the rate rather than the Commission. Maintenance of the "market dominance" standard is not intended in any way to restrict the ability of the Commission to apply this concept, both in its regulations and individual cases.

Consistent with the new rail transportation policy of this Act, the Conferees intend that competition be recognized as the best control on the ability of railroads to raise rates. The purpose of this legislation is to reverse the decline of the railroad industry, which has been caused, in part, by excessive government regulation. The

Conferees believe that by allowing the forces of the marketplace to regulate railroad rates wherever possible the financial health of the railroad industry will be improved and will benefit all parts of the economy, including shippers, consumers, and rail employees.

The Conference substitute establishes which party shall have the burden of proof in establishing that a rate is not reasonable and has the effect of maintaining the existing burden of proof in determining reasonableness, i.e. the carrier has the burden of proof in investigation and suspension proceedings and the shipper in compliant cases. The railroad bears the burden of proof when a rate increase is greater than the 6 percent zone for the first four years, or the 4 percent zone after the first four years. If the rate increase is within the 6 percent or 4 percent zones, but is more than 20 percentage points above the jurisdictional threshold or 190 percent of revenue to variable cost, whichever is lesser, the railroad will also bear the burden of proof if the Commission decides to investigate.

In complaint cases, i.e., where the shipper is complaining about an existing rate, the burden remains on the shipper to prove that the rate is unreasonable, no matter what level the rate is. The Conference substitute does not alter the existing procedure which places such a burden on the shipper.

The shipper must bear the burden of proof when the rate increase is within the 6 percent or 4 percent zones, and the rate is not more than 20 percentage points above the jurisdictional threshold or 190 percent of revenue to variable cost whichever is lower. The shipper also bears the burden whenever a rate increase is within the 6 percent or 4 percent zone, but the rate increase brings the rate more than 20 percentage points above the jurisdictional threshold or 190 percent of revenue to variable cost whichever is lower, and the Commission decides not to investigate.

The Conference substitute adopts the language from the House bill that in determining rate reasonableness the Commission must recognize the policy of this Act that carriers must earn adequate revenues. The difficult economic situation of much of the railroad industry is one of the reasons for this legislation, and the Commission is required to make efforts to ensure that rail carriers earn adequate revenues.

The Conference substitute maintains language similar to existing law which states that variable costs shall be determined by formulas or procedures prescribed or certified by the Commission.

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The Conference substitute maintains the requirement that joint rates must be reasonable. The conferees intend that the rate standard for the reasonableness of joint rates shall be the same as for all rates. The establishment of the minimum compensatory joint rate relief in Section 217 of this Act is not intended to mean that such minimum levels relate to the maximum reasonable level for joint rates. A joint rate must be reasonable, as must the divisions of such a joint rate between carriers, and the Commission should not interfere to require joint rates or any carrier's division of a joint rate to be maintained below the rate levels permitted by this Act.

Rates may not be established below a reasonable minimum. Rates which contribute to going concern value shall be reasonable and rates which do not contribute to going concern value shall be

presumed to be unreasonable. In essence, these provisions strengthen the minimum rate policies of the 4R Act by placing the burden of proof on the party challenging a rate as too low and by expediting the procedures whereby rates which are too low can be raised.

These modifications will ensure that carriers pricing in a manner that meets rational economic standards will not be prevented from improving their economic position by reducing rates. While the Conferees believe there may be circumstances in which rates which do not contribute to going concern value are reasonable, those circumstances are likely to be unusual and once a complainant has shown a rate does not contribute to going concern value, that rate shall be presumed to be unreasonable until the carrier charging the rate bears the burden of showing that the rate is reasonable.

These provisions will ensure that those shippers can protest that a rate is too low and that a carrier is worse off than it would be if the rate were raised. Upon finding this to be the case, the Commission may raise the rate to the minimum level at which the rate benefits the carrier. All shippers as well as the carrier are better off if traffic which makes a contribution moves than if it does not, because the carrier is made financially stronger and need not rely as much on revenue from other shippers.

The Conferees do not intend, however, that rates which are contributing to the going concern value of a carrier should be forced to be raised. The Commission should not restrict the carriage of this beneficial traffic, placing a greater burden on other shippers. This is a decision that is best made by the carrier as it judges the market. Since a carrier has no reason to keep a rate below the most beneficial level, the Conferees have no reason to believe rates will be held below the most beneficial level except by oversight. Accordingly, rates that contribute to going concern value shall be reasonable and the Commission may not require that those rates be raised.

SECTION 202—DETERMINATION OF MARKET DOMINANCE

Senate bill.—The Senate bill establishes a level below which the Commission will have no jurisdiction over railroad rates. The jurisdictional level is equal to the average ratio of revenue to variable costs for all transportation. Until such level is determined by the Commission the jurisdictional level is set at 150 percent of revenue to variable cost. The Senate bill also repeals 49 U.S.C. 10709, which

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is the section establishing "market dominance" as a test for Commission jurisdiction over railroad rates.

House amendment.—Section 204 of the House amendment retains 49 U.S.C. 10709 and adds a new subsection. The new subsection requires the Commission to find that a rail carrier does not have market dominance over the transportation to which a rate applies if that rate is below a revenue to variable cost ratio of:

160 percent from the effective date of the Act to September 30, 1981;

165 percent from September 30, 1981, to September 30, 1982;

170 percent from September 30, 1982, to September 30, 1983;

175 percent or the "cost recovery percentage", whichever is lower, from September 1, 1983 to September 30, 1984; and

the "cost recovery percentage" thereafter, except that the "CRP" may not exceed 180 percent nor be lower than 170 percent.

The House amendment establishes a "cost recovery percentage" which is the revenue to variable level at which the industry is covering its costs as defined in the House amendment. The Commission is required to establish the "cost recovery percentage" annually.

Conference substitute.—The Conference substitute adopts the House provision establishing and defining the "cost recovery percentage". It also adopts the House language establishing a jurisdictional threshold of 160 percent increasing 5 percent each year through 1984, when the jurisdictional threshold is 175 percent or the cost recovery percentage, whichever is lower. After September 30, 1984, the jurisdictional threshold is the cost recovery percentage, but it may not be lower than 170 percent or higher than 180 percent.

The Conferees have adopted the concept of a jurisdictional level that varies according to the performance of the railroad industry. When the industry is earning revenues which are adequate, it is appropriate for the Commission to have the authority to review rate increases more carefully.

The Conference substitute incorporates a provision which allows a carrier to use present Rail Form A, with adjustments specified by the Commission as appropriate for the type of traffic involved, or its successor as the basis for determining the revenue to variable cost ratio of a rate. The burden is on the carrier to establish on such a basis that the rate is below the jurisdictional level, and the complainant may rebut the showing of the revenue to variable cost ratio according to the Commission formula by evidence of such type and under such burden of proof as the Commission shall prescribe. By such a showing the complainant or the railway may demonstrate that the revenue to variable cost ratio is different than the one established under adjusted Rail Form A or its successor.

The Conferees do not intend that the Commission alter the jurisdictional threshold by reducing the items which will be considered as part of the variable cost.

The Conferees have adopted a jurisdictional threshold which will deny the Commission jurisdiction over rates which the Commission reviews under present law. The reduction in Commission jurisdiction is adopted because the conferees believe that competition

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should be the determining factor in railroad rates wherever possible. The railroads' share of intercity freight traffic has decreased dramatically in the past three decades, to the point where most freight traffic can be transported by another mode and is subject to competition.

SECTION 203—ZONE OF RATE FLEXIBILITY

Senate bill.—The Senate bill establishes procedures and standards for determining a "base rate" and an "adjusted base rate" for purposes of computing rate increases. Carriers are allowed to recover inflation quarterly on individual rates up to the level of the adjusted base rate without challenge.

To determine the adjusted base rate the Commission must publish quarterly a rail cost adjustment factor, which uses an Index of Railroad Costs to keep rates equal with inflation.

The Senate bill allows a rail carrier to increase a rate by an amount not exceeding 5 percent of the adjusted base rate, subject to the restriction that the increase over 5 years under this section not exceed 14 percent. The Commission is not allowed to suspend any rate increase within this 5 percent zone, and it may investigate such increase only if it exceeds a revenue to variable cost ratio established by the Commission or if the carrier or carriers proposing the rate increase have achieved an adequate revenue level. Even a rate increase within the 5 percent zone is subject to challenge on complaint, with the burden of proof on the shipper.

If the Commission decides not to investigate a rate within the 5 percent zone, it must set forth its reasons for not doing so, after giving consideration to three factors—the amount of traffic transported below variable cost, the amount of traffic which contributes only marginally to fixed cost and the extent to which such rates can be changed, and the impact of the proposed rate increase on national energy goals, taking into account the railroads' role as a primary source of transportation and the need for a sound rail transportation system.

The Commission shall consider, among other factors, when determining the reasonableness of a rate, the amount of traffic which is transported below variable costs, the amount of traffic which contributes only marginally to fixed costs and the extent to which such rates can be changed, and the carrier's mix of rail traffic to determine whether one commodity is paying a disproportionate share of the carrier's overall revenues.

The Senate bill allows the Commission to investigate a rate even if it is within the 5 percent zone if such a rate is proposed by a carrier or carriers with adequate revenues.

House amendment.—The House amendment establishes a base rate for purposes of rate increases, and an adjusted base rate to account for inflation. It also provides for a 6 percent zone for each of the four years after the date of enactment, and a 4 percent zone for carriers without adequate revenue for each succeeding year.

The House amendment does not permit a suspension or investigation of rate increases within the 6 percent or 4 percent zones, if the resulting rate is less than 190 percent or revenue to variable cost or 20 percentage points above the jurisdictional threshold, whichever is lower. It also prohibits the Commission from using

rules, classifications, or practice changes to limit rates. It includes a provision that limits the allowable rate on coal movements fitting a particular description.

Conference substitute.—The conference substitute adopts parts of the Senate bill and parts of the House amendment. It establishes the base rate as the rate in effect on the effective date of the Act. The "adjusted base rate" is computed quarterly by means of a "rail cost adjustment factor", as contained in the Senate bill.

A carrier is allowed to change a rate to conform to the "adjusted base rate" at any time without challenge. A carrier may not receive a rate increase under the adjusted base rate method if the carrier has received an inflation increase through general rate increases or the inflation index thereby already assuring that the rate reflects inflation.

The language of subsection (b) makes it clear that rate increases which do not exceed the adjusted base rate may not be found by the Commission to exceed a maximum reasonable level. The reference to rate increases under subsections (c) and (d) of this section is not intended to suggest that increases under those subsections are presumed to be reasonable. The reasonableness of such rate increases shall be determined under the same standards of maximum reasonableness applicable to any other rate or rate increase.

The conference substitute adopts the 6 percent zone contained in the House amendment. A carrier is free to increase any rate by 6 percent of the adjusted base rate.

During the four year period after the effective date of the Act, the total increase allowed under this section is limited to 118 percent of the adjusted base rate. If a carrier does not take all or a portion of a rate increase in a year, the carrier may take that portion in the next succeeding year.

If a carrier chooses not to take some portion of the allowed 24 percent increase during the first four years, the carrier may take that portion in the next 2 succeeding years, except that the rate increase allowed under this section is limited to 10 percent for each of those years.

The 6 percent zone does not establish a limit for allowable rate increases by the Commission. If the Commission finds that rate increases do not exceed a reasonable maximum, it may allow such rate increases under the normal standards and procedures of the Act. The 6 percent zone is established as a procedural mechanism for carriers to change rates without undue regulatory interference. The Conferees believe that the best regulator is the marketplace, and the forces of competition will restrain railroad rates more effectively than federal regulation.

The Conference substitute requires the Commission, when considering a rate increase within the 6 percent zone and below the point 20 percentage points higher than the jurisdictional level or 190 percent of revenue to variable cost, whichever is lower, to give due consideration to whether a carrier proposing a rate increase has attained adequate revenues, 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. This provision is intended to apply only for the four years that the 6 percent zone applies, and only to those rate increases which are

within the 6 percent zone and below the point 20 points higher than the jurisdictional level or 190 percent of revenue to variable cost, whichever is lower.

The Conferees intend that the Commission give due regard to two things, whether a rate increase would mean excessive profits, and the need for a rate increase in light of the carrier's revenue position taking into account the policy of this Act that inadequate revenue carriers make adequate revenues. This language is not intended to imply that excessive profits for inadequate revenue carriers are reasonable.

The Conferees understand that the Commission presently considers the adequacy of revenues in its determination of reasonableness, and the Conferees intend that the Commission continue to consider the adequacy of revenues in its determination of reasonableness. The Conferees intend that the Commission continue to look carefully at the adequacy of a rail carrier's revenues when considering whether a rate is reasonable and to consider all the other factors which it presently considers in determining reasonableness.

The Conference substitute adopts the 4 percent zone from the House amendment. A 4 percent zone is established free from suspension, and free from investigation if the resulting rate is below 190 percent or 20 percentage points above the jurisdictional threshold, whichever is lower. A carrier is allowed 4 percent of the existing rate as an increase without undue regulatory interference.

This zone is limited to carriers without adequate revenues. Carriers with adequate revenues are not allowed this 4 percent zone on single line rates, and are not allowed the zone on joint line rates unless the Commission determines in its rulemaking under this provision that it cannot establish rules preventing rail carriers with adequate revenues from taking advantage of the 4 percent zone without denying the zone to carriers without adequate revenues. The conferees expect the Commission to establish the rules for determining how the 4 percent zone is to be applied in conformity with the policy of this Act, which is designed to provide increased regulatory freedom and to allow carriers to earn adequate revenues.

Neither the 4 percent or the 6 percent zone is intended to create any presumptions about the rate increases beyond the zone. The Conference substitute states unequivocally that a rate increase beyond the zone establishes no presumption of market dominance or reasonableness.

The Conference substitute adopts the House amendment which establishes the point at which the Commission may investigate a rate increase within the 6 percent or 4 percent zones. The point is 20 percentage points above the jurisdictional threshold or 190 percent of revenue to variable cost, whichever is lower. For example in the first year the jurisdictional threshold is 160 percent, and the point at which the Commission may investigate is 180 percent.

The Conference substitute adopts the Senate provision which requires the commission to set forth its reason for not reviewing a rate increase or new rate. The Commission shall give due consideration, in its decision whether or not to investigate, to the following factors:

1. the amount of traffic which is transported below going concern value, and efforts made to minimize such traffic;

2. the amount of traffic which contributes only marginally to fixed costs; and

3. the impact of the proposed rate increase on the attainment of the national energy goals and the rail transportation policy of this Act, taking into account the railroads' role as a primary source of energy transportation and the need for adequate revenues to achieve a sound rail system.

The Conferees have used the term "going concern value" in the first consideration in place of "variable cost" to eliminate any confusion about what is intended. Railroads should not be carrying traffic which is losing money but in a competitive environment railroads should be attracting whatever traffic they can at the lowest rates that will attract the traffic. There should be no incentive to prevent such pricing, which is to the advantage of the shipper and the consumer.

The Conferees have added to the third consideration the rail transportation policy of this Act. The national energy goals, which include a reduction of dependence on foreign energy sources and the encouragement of fuel efficient forms of transportation within the United States, are compatible with the transportation policy of this Act. To reduce dependence on foreign energy sources this country must stimulate utilization of its abundant, indigenous coal reserves. For coal to be a viable alternative, we must have a sound rail transportation system capable of handling such coal efficiently and economically. At a minimum the rail system will need to invest over $5 billion over the next 4 years to maintain a system adequate for increased coal use. Without such an investment the national energy policy of decreasing reliance on foreign energy sources will never be achieved.

Decisions whether to investigate a rate are not presently reviewable in court. The conferees intend, and the Act specifically states, that a decision whether or not to investigate remains not reviewable.

The Conference substitute adopts the language of the Senate bill specifying three factors among those already considered by the Commission which the Commission must consider in determining the reasonableness of a rate, with changes. As in the previous section the term "going concern value" is substituted for "variable costs". In the third consideration, the word "disproportionate" is changed to "unreasonable". It requires the Commission to consider evidence of the factors listed.

The Conference substitute adopts the House provision limiting coal rates which meet a specific description. This provision deals with the celebrated and extended dispute over the freight rate for rail transportation of coal to a municipally owned utility in San Antonio, Texas. This utility decided voluntarily in 1973, prior to the oil embargo, and prior to any legislative requirements concerning use of alternate fuels, to convert an oil/gas unit then on order to coal and to build this and an additional unit on an accelerated basis, resulting in the displacement of oil and gas equivalent to more than 50 billion cubic feet of gas on an annual basis. Unfortunately the appropriate rate for the transportation of coal to these new plants has been the subject of dispute and protracted litiga-

tion. Due to the unique circumstances of the San Antonio situation, this provision imposes certain short term limitations on the rate level for the San Antonio coal movement. The purpose of this provision is not punitive and the rate specified for such a coal movement shall have no effect on any decision of the Commission or a court, and evidence of the rate or this section shall be inadmissible in any proceeding.

The Conference substitute adopts the House provision. New section 10709(h) makes it clear that the Commission may not use any of its residual powers to regulate rates, rules, classifications, and practices as tools to interfere with the rate freedom provided by the Staggers Rail Act. The Conferees intend that a practical rule or classification which has the effect of resulting in an increased rate for transportation shall not be found unreasonable unless, in the absence of its effect on rate levels, it would itself be unreasonable.

SECTION 204—TRANSPORTATION OF RECYCLABLE MATERIALS

Senate bill.—The Senate bill requires that rates for recyclable or recycled materials be no higher than the average revenue to variable cost ratio of all rates for railroad transportation. Any rate which exceeds that threshold shall not be required to bear further rate increases.

House amendment.—No provision.

Conference substitute.—The Conference substitute adopts the Senate bill with certain changes. The substitute excludes recyclable or recycled iron and steel from this provision. Rates which are currently above the threshold would be prohibited from increases until such time as the rate falls below the average revenue to variable cost threshold. The standard for establishing the average revenue to variable cost threshold is the standard used in the Senate bill.

SECTION 205—RATE REGULATION PROCEEDINGS; ADEQUATE REVENUES

Senate bill.—The Senate bill required the Commission to submit to Congress, within one year after the enactment of the act, a study on the desirability of using return-on-investment as a threshold standard for jurisdiction over the reasonableness of rail carrier rates. The Commission was also required to submit a report to the Congress every three years which analyzed the revenue needs of carriers and made appropriate recommendations.

House amendment.—The House amendment requires the Commission to commence and conclude within 230 days of enactment a proceeding to determine whether, and to what extent, product competition should be considered in determining the reasonableness of rail carrier rates. For purposes of only this proceeding product competition is defined in the amendment. This definition is not intended to be taken into account in any other Commission or court proceeding dealing with competition from alternative sources or types of commodities. The amendment provides that on the basis of the study the Commission may find that in determining the reasonableness of a rate, product competition should be given the same or greater weight than in current proceedings or proof of product competition should be given greater or conclusive weight.

The section is not to be construed as requiring any change in the Commission's present standards concerning reasonableness and is not to influence in any way the meaning of market dominance.

The House amendment also requires the Commission to submit to Congress within three years of the effective date of the Act recommendations as to the threshold level for Commission jurisdiction over the reasonableness of a proposed rail rate.

The House amendment also requires the Commission within 180 days after the effective date of the Act to establish standards for determining what constitutes adequate revenues under section 10704 of the Act and to report to the Congress, within 180 days after the effective date and annually thereafter, which carriers were earning adequate revenues.

The House amendment makes the rail carrier rate level resulting from any case pending in any Federal court on July 22, 1980, the base rate for purposes of determining permissible rate increases.

Conference substitute.—The Conference substitute adopts the provision from the House amendment requiring the Commission to initiate a proceeding within 230 days of the effective date of the Act to determine whether and to what extent, product competition should be considered in determining the reasonableness of rail carrier rates. The substitute amends the House amendment to underscore the fact that the ICC proceeding shall not be evidence in a Commission or court proceeding regarding the scope of the market dominance concept.

The Conferees intend to exclude from any rule adopted under this subsection existing supply contracts, or for two years, whichever is less. The Conferees also intend that the Commission, in its rule-making, look at the existence of long-term contracts in determining how to apply product competition. Product competition means the availability to a consignee at a competitive delivered cost and in sufficient quantities of products or commodities which are of the same type as the coramodity or product to which the rate applies without regard to whether such products or commodities are available from the same or a different origin as those to which a rate applies. An example of where product competition does not exist is a situation in which a particular automobile company manufactures bumpers at Plant A and ships them to its Plant B for assembly because it cannot use another automobile company's bumpers.

The Conference substitute amends existing Section 10704(a)(2) of Title 49 clarifying that the Commission has the authority to revise its standards and procedures for determining revenue adequacy as necessary; by directing the Commission to conclude a proceeding under Section 10704(a)(2) within 180 days after the effective date of the Act; and on the basis of standards and procedures under Section 10704(a)(2) to determine which rail carriers have adequate revenues within 180 days of the effective date of the Act and on an annual basis thereafter.

SECTION 206—INFLATION-BASED INCREASES

Senate bill.—The Senate bill provides a free zone for the recovery of inflationary cost increases.

House amendment.—The House amendment allows the Commission to establish a percentage rate increase or rate index for rail carriers in order to compensate for inflation. Such percentage increase or index may be applied carrier by carrier or industry wide. The percentage rate index allows the Commission to establish a range within which carriers may increase rates differently for different commodities, but recovering no more than total inflation.

Conference substitute.—The Conference substitute provides that the Commission may establish a percentage rate increase or index to allow carriers to cover inflation. Such an index or percentage may not be necessary, since carriers will be free to recover inflation on individual rates without challenge. In the event that carriers find they are unable to keep up with inflation, and the Commission believes that it must prescribe a general mechanism to allow carriers to cover inflation, this percentage increase or index is allowed. The provision makes specific reference to the policy section of the Act which discourages the automatic pass-through of inflation through increases of general applicability.

Under this provision, the Commission is allowed to establish a range of permissible increases, and the carriers may take increases within that range. The total increase in revenue may not account for more than is necessary to cover the total of inflationary cost increases.

SECTION 207—INVESTIGATION AND SUSPENSION OF RATES

Senate bill.—The Senate bill requires the Commission to complete a proceeding when a suspension has occurred within five months, unless it reports to the Congress that it is unable to do so, in which case it may take an additional three months.

House amendment.—The House amendment requires the Commission to act within five months if a suspension has occurred, and provides an additional 3 months if the Commission reports to the Congress that it is necessary. The House amendment also revises the standards under which the Commission may suspend a rate by adding the word "substantially" to the requirement that the Commission find that it is likely that the complainant will prevail on the merits and by adding a new standard which requires the Commission to find that because of the peculiar economic circumstances of the protestant, he is not protected by the refund provisions. The burden is on the protestant to prove that the standards are met.

The House amendment also provides for an accounting and refunds to shippers where a proposed rate increase is suspended, and to rail carriers if the proposed rate increase is suspended and later found to be reasonable.

Conference substitute.—The Conference substitute adopts the House amendment with a modification with respect to refunds. The substitute makes suspension more difficult.

SECTION 208—CONTRACTS

Senate bill.—The Senate provision clarifies the status of contract rate and service agreements in an effort to encourage carriers and purchasers of rail service to make widespread use of such agree-

ments. In addressing concerns of small shippers the Senate provision also limited the percentage of equipment a rail carrier could dedicate to contract service. This limitation was designed to insure that the carriers always had sufficient equipment to meet common carrier obligations. The Senate bill limits the number of cars a carrier can dedicate to contract service to 35 percent of the carriers' capacity by major car type. A further limitation was imposed on large shippers, again to protect the small shippers' ability to obtain sufficient cars, with respect to contracts between Class I carriers and shippers which originate an average of 1,000 cars or more per year by major car type during any preceding three-year period, nor more than 40 percent of that coverage could be used for contracts. The remainder of the shipper's car needs would be supplied by the carrier under the common carrier obligation as with all other non-contracting shippers. The smaller shippers, i.e., one who originates less than 1,000 cars per year (based on a 3 year average prior to the contracting period) could contract for 100 percent of the shipper's needs.

Further, the Commission may order a carrier to provide rates and services similar to those in any contract which it finds the carrier did not make available to a similarly situated shipper.

House amendment.—The House amendment permits carriers to enter into contracts with shippers. Once approved, a contract is not subject to challenge.

First, carriers may enter into contracts filed with the Commission (along with summaries to be made public) unless the Commission finds that the contract unduly impairs the ability of the carrier to fulfill its common carrier obligation to a complaint, unreasonably discriminates against a port or, in the case of agricultural commodities, the carrier has unreasonably discriminated the complainant a similar contract under similar conditions or the contract constitutes a destructive competitive practice.

Second, the Commission may begin an investigation within 30 days of the filing of a contract on its own motion or on complaint. The Commission has 30 days following the initiation of a proceeding to approve the contract. If the Commission fails to act, then the contract is approved.

Third, if the Commission determines that a carrier has refused to provide an agricultural shipper with a similar contract, the Commission may order the carrier to enter into such a contract with appropriate adjustments.

Fourth, once a contract has been approved by the Commission, the Commission may not require violation of the contract except to require compliance under the Commission or any court under the provisions of this subtitle. The exclusive remedy for breach of a contract entered into under this section is an action in a State or U.S. district court, unless the parties otherwise agree.

Fifth, during the first three years after passage of the Act, a carrier may enter into contracts for the transportation of agricultural commodities involving the utilization of carrier-owned or leased equipment not in excess of 35 percent of the capacity of such carriers' owned or leased equipment by major car type, except with respect to a contract with a shipper of over 1,000 cars or more per year for the prior three years in which case the carrier may con-

tract for more than 40 percent of the average equipment utilized in the three year period. The Commission may raise these limits.

Conference substitute.—The conference substitute adopts the Senate amendment with several changes. The percentage of limitation on cars for contracts for agricultural commodities, is expanded to include forest products and paper and is not limited to three years after passage of the Act. However, the Commission, as well as any other party, may initiate a proceeding to modify this percentage limitation. Unreasonable discrimination with respect to agricultural, forest product or paper shippers is defined for purposes of this section as that term is used in section 10741 of the Interstate Commerce Act. A similar provision with respect to ports from the House amendment is retained. The conferees stress that the establishment of contract rates is a significant aspect of the new freedom allowed to carriers to market rail transportation more effectively. Therefore, the grounds for disapproving contracts have been intentionally limited.

The provision establishes a separate class of rail service and thereby makes carriers entering into such contracts both common carriers and contract carriers. Once a contract is approved by the Commission or goes into effect because the Commission has not acted within the specified time limits, the service provided under the contract is exempt, subject to the specific limitation of section 11128, from all regulation and all of the requirements of the Interstate Commerce Act. However, the Commission is given the specific authority to limit the right of a rail carrier to enter into future contracts if it determines that such additional contracts will impair the ability of the rail carrier to fulfill its common carrier obligations under Section 11101 of the Act. Once contracts are approved under this section, they are to be enforced in the courts and not at the Commission.

Shippers who do not elect to enter into contracts, or are unable to do so, are assured that carriers will have the same common carrier obligations as in existing law. The percentage limitation on equipment for agricultural commodities, forest products and paper result from problems experienced in providing adequate numbers of cars for the shipment of these products and are intended to ensure that a carrier can meet its common carrier obligations. These limits are to apply to any type of car which could practicably be used for shipping agricultural commodities, forest products or paper. However, they are not intended in any way to imply a limit on a carrier's ability to contract with respect to other types of equipment.

While the Conferees intend to encourage shippers to contract they recognize the difficulty that small shippers may have in negotiating contracts, and therefore, the Conference substitute adopts the Senate provision establishing a railroad contract rate advisory service. The Conference substitute also includes the Senate provision which gives the Commission the ability to order a carrier to provide rates and services similar to those in any contract which it finds the carriers did not make available to similarly situated agricultural shippers. Finally, the Conference substitute includes a provision which allows agricultural shippers to challenge a contract on the grounds that the proposed contract constitutes a destructive competitive practice. It should be noted that these provisions were

included in recognition of the fact that smaller shippers are particularly concerned about the market power of their larger competitors once the contract rate provisions are put into effect. It is the intention of the Conferees that the Commission carefully review this aspect of the competitive situation in approving contracts.

The existing Federal antitrust laws apply to this section.

SECTION 209—DEMAND SENSITIVE RATES

Senate bill.—The Senate bill amends 49 U.S.C. 10727 to provide for the filing of a demand-sensitive tariff in response to explicit or anticipated fluctuations in demand for rail services. The tariff would apply to a specified movement and would include a maximum and minimum rate, subject to maximum and minimum rate regulation. The Senate bill specifically excluded grain from this provision.

House amendment.—The House amendment repealed 49 U.S.C. 10727 because of the concerns raised by agriculture interest groups about the way demand-sensitive tariffs had been implemented. The provision was originally included in the 4R Act to provide greater car utilization by encouraging rail shippers to ship in off-peak, low demand periods. The repeal of the demand-sensitive tariff authority should not be construed by the Commission as a resolution of the car utilization problems. The Commission has other ways to abate the serious problem of the declining car utilization in the rail industry.

Conference substitute.—The Conference substitute adopts the House provision. The conferees direct the Commission to explore alternative methods of improving car utilization and making railroad prices and services more responsive to market conditions instead of artificial regulatory restraints. However, the Commission is on specific notice not to contravene the policy set out by Congress which is clearly to prevent demand-sensitive rates by any means to apply to agricultural commodities.

A letter from Chairman Gaskins on the Commission's existing authority in this area is attached as an appendix.

SECTION 210—PHASEOUT OF CAPITAL INCENTIVE RATES

Senate bill.—The Senate bill repealed 49 U.S.C. 10729, which provides that if a capital incentive rate is approved by the Commission, such rate not be found unreasonable or discriminatory for 5 years. A capital incentive rate is based on an investment by a shipper, railroad or interested third party of $1 million or more in rail-related equipment or facilities. The intent of this provision was to encourage the negotiation of rates reflecting individualized and innovative service and to create stability which would promote large investments. Regulatory complexities and ambiguities have frustrated the intent of this section. Moreover, the explicit authorization of contracts makes this section unnecessary. Capital-incentive rates filed not less than 90 days before the date of enactment would not become effective, but rates filed before that date remain effective subject to the 5-year limitation.

House amendment.—The House amendment repeals the capital-incentive rate provision, but preserves all capital-incentive rates

from challenge as unreasonable or discriminatory if filed prior to the effective date of this Act, subject to the 5-year limitation from the date the rate became effective, unless the parties otherwise agree. The Commission may, during the period the rate is in effect, order the rate revised to a level equal to the incremental cost of providing the transportation, if the Commission finds that the rate level in effect reduces the going concern value of the rail carrier.

Conference substitute.—The Conference substitute adopts the House amendment.

SECTION 211—PERMISSIVE LIMITED LIABILITY

Senate bill.—The Senate bill amends 49 U.S.C. 10730 with respect to released rates. Under existing law, the Commission is authorized to permit released rates in cases where rates based on a declared or released value would be just and reasonable under the circumstances surrounding the transportation. Under this section, no carrier may publish rates based on the declared or agreed value without specific authority from the Commission.

Under the Senate bill, rail carriers may establish released value rates subject to the provisions and procedures set forth in chapter 107. The effect of this change is to authorize the filing of such rates without prior Commission authorization. In many instances, shippers have the resources to obtain insurance at a reasonable price and to bear at least a portion of the risk of lost damaged cargo. Carriers and shippers should be allowed to agree on a fair rate which explicitly takes into account the risk of loss or damage.

Rail carriers should be able to negotiate for the type of service required and the rate to be paid for that service. It is with that purpose in mind that this subsection has been added to section 10730—to permit the establishment of released rates as an additional option available to shippers and rail carriers. Full value rates will of course continue in effect for the use of those shippers and receivers which choose not to utilize released rates established and filed under this provision or agree to other terms as part of a contract for services.

House amendment.—The House amendment provides that rail carriers may establish rates for the transportation of property under which the liability of the carrier for such property is limited to a value established by a written declaration of the shippers or by a written agreement between the shipper and carrier, and such agreement may provide for a specified deductible for any claim against the carrier for loss or damage to the property or delay in the transportation of such property. The ability to use released rates including the deductible in an agreement, gives both the shipper and carrier greater flexibility with respect to negotiation of rates without harrassment and delay at the Commission.

The House amendment changes provisions of the Carmack Amendment, 49 U.S.C. 11707 concerning the availability of special damages, comparative negligence standards for liability and the time period when claims must be filed with the carrier and where actions must be instituted against a carrier under the Carmack Amendment.

Conference substitute.—The Conference substitute adopts the House provision with respect to released rates, including deductibles, but drops the references to the Carmack Amendment, except for venue provisions. It adds a study with respect to the need for the Carmack Amendment. At the insistence of several shipper groups, explicit statutory language prohibiting special damages was eliminated because special damages are not permitted under the Carmack Amendment.

A provision regarding the changing of the existing case law that makes the railroad almost strictly liable, unless it can establish that it was neither negligent nor not liable under certain recognized absolute defenses, was dropped and has been included in the study. While the study is being completed, carriers are not prohibited from arguing to the courts that the Carmack Amendment was intended to codify common law standards and therefore, a comparative negligence standard ought to be adopted.

The Conference substitute adopts the House amendment with respect to changes in venue for Carmack Amendment cases. Hereafter, cases may only be brought in the court having jurisdiction over the originating carrier's point of origin, against the delievering carrier in a court at the principal place of business of the person entitled to recover against the carrier or having jurisdiction over the point of destination, or against an originating, intermedinte or delivering carrier in a court having jurisdiction over the point where the loss or damage is alleged to have occurred. Because existing law permits an action wherever the carrier operates, venue is virtually uncontrollable and frequently, inconvenient.

The Carmack Amendment was enacted at a different time with different factors affecting rail carriers. Among other issues, the studies should examine whether special damages are being recovered from rail carriers, and, whether a rail carrier ought to be responsible for such damages in the absence of a clear showing, by written agreement, that the carrier was made aware of certain foreseeable risks and had an opportunity to make appropriate arrangements.

Similarly, the studies should consider whether it makes sense in 1980 to hold a carrier liable for 100 percent of the damages even if the carrier was only 10 percent at fault. Current law makes a carrier totally liable unless the carrier can show that it was completely free from fault and that the shipper's negligence was the sole cause of the damages. The study should consider whether it is appropriate to follow the recent trend among the states to adopt comparative negligence standards, requiring each party to bear the costs of its own negligence. More than a majority of states have departed from prior law making liability an all or nothing alternative. The study should determine whether similar policy goals would require similar legislation with respect to common carrier obligations.

The studies should also address other issues raised by the Carmack Act, including the recovery of attorneys' fees, appropriate time limits, the feasibility of a "no-fault" system, and proper venue requirements.

SECTION 212—RATE DISCRIMINATION

Senate bill.—No provision.

House amendment.—The House amendment amends section 10741 to state that differences between rates, rules, or practices which result from different services do not constitute a violation of this section. The amendment specifically exempts surcharges, approved contracts, separate rates for distinct services under 10728, rail rates applicable to different routes and customer solicitation expenses from being challenged as discriminatory. The Commission retains its existing authority to regulate rate relationships between and within ports.

Conference substitute.—The Conference substitute adopts the House amendment. The Conference substitute will help ensure that, with the exception of the right of ports to complain of unjust discrimination between and within ports and the special remedies provided for certain unjustly discriminatory contracts in new section 10713, claims of unjust discrimination may not be used to hamper the development of sound economic rate and service relationships. The conferees also expect the Commission to exercise its remaining power under section 10741 only where it is needed to prevent abuses of market power where discrimination cannot be justified by differences in demand for services or costs.

The conferees intend that the reference to separate rates or distinct rail services in this section shall not affect the *Wichita* doctrine.

SECTION 213—EXEMPTIONS

Senate bill.—The Senate bill amended section 10505 to provide that, where any provision of the Interstate Commerce Act is not needed to protect shippers from the abuse of market power, the "limited scope" restriction in the original section 10505 would not apply. The Senate bill also removed the requirement that a proceeding be held in all cases before an exemption is granted.

The Senate bill requires the Commission to provide an exemption from regulation when it finds that regulation is not necessary to carry out the transportation policy and the transportation or service is either of limited scope or regulation is not needed to protect shippers from the abuse of market power. The Commission may not issue an exemption which will substantially lessen competition and coordination between water and rail carriers. No exemption order shall operate to relieve railroads of their common carrier liability for claims under 49 U.S.C. 11707.

House amendment.—The House amendment amends section 10505 of the Interstate Commerce Act and provides that the Commission shall exempt a person or transaction from one or more provisions of the Act where it is not necessary to carry out the rail transportation policy and where (1) the transportation or service is of a limited scope or (2) the application of a provision is not needed to protect shippers or receivers where there is an absence of effective competition or (3) where there is effective competition. The House bill, like the Senate bill, removed the requirement that a proceeding be held in all cases. The Commission is charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards.

The amendment places certain limits on the Commission's authority to grant exemptions. First, section 10505(e) provides con-

tractual terms for liability and claims consistent with section 11707. This limitation does not affect the ability of a carrier to offer alternative terms nor give the Commission the authority to require either any specific level of rates or services based on Section 11707, nor does it require the filing of those terms with the Commission. Second, the exemption authority may not be used to relieve a carrier of its obligation to protect the interests of employees. Third, under section 10505(f) the exemption authority may not be used to authorize intermodal ownership otherwise prohibited by this title.

Conference substitute.—The Conference substitute combines the Senate and House provisions. The bill permits exemptions wherever regulation is not needed to prevent abuses of market power, regardless of the presence of effective competition. The policy underlying this provision is that while Congress has been able to identify broad areas of Commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemptions from remaining regulation. The conferees anticipate that through the exemption process the Commission will eventually reduce its exercise of authority to instances where regulation is necessary to protect against abuses of market power where other federal remedies are inadequate for this purpose. Particularly, the conferees expect that as many as possible of the Commission's restrictions on changes in prices and services by rail carriers will be removed and that the Commission will adopt a policy of reviewing carrier actions after the fact to correct abuses of market power.

For these reasons we also expect that except to the extent necessary to comply with subsections (e) and (g) of section 10505 of title 49 U.S.C. as amended by the Staggers Rail Act of 1980, an exemption order issued by the Commission prior to the effective date of the Staggers Rail Act of 1980 shall remain in full force and effect unless revoked pursuant to subsection (d) of section 10505 of title 49 U.S.C. as amended.

SECTION 214—INTRASTATE RATES

Senate bill.—The Senate bill amends section 11501 to reaffirm both that the Commission's power in this area is only as otherwise authorized by this title and that the States' power cannot conflict with the Federal regulatory scheme.

First, it amends section 11501 to limit the Commission's authority to prescribe a rate or effect other action which is inconsistent with its rate regulatory authority as limited by the act.

Second, it reaffirms that where the Commission has withdrawn its jurisdiction to regulate, the State could not assume such jurisdiction.

Third, it provides that to the extent States do have jurisdiction, they are to regulate in accordance with the transportation policies set forth in the act.

Finally, it shortens the time in which a failure by the State to act on an intrastate rate allows Commission action.

House amendment.—The House amendment amends sections 11501, 10103, and 10501 of the Interstate Commerce Act by exempting rail carriers from the provisions of section 11501(a) and by adding provisions making the Commission's and certified States' jurisdiction over intrastate and interstate rail carrier rates, classifications, rules and practices and the remedies provided by the Act exclusive.

First, it amends section 11501(a) of the Interstate Commerce Act to exempt rail carriers from present provisions for Commission jurisdiction over intrastate carriers.

Second, it amends section 11501 by adding new provisions which provide that only State authorities whose standards and procedures have been certified by the Commission may exercise jurisdiction over intrastate rail rates, classifications, rules and practices. Intrastate rail transportation not subject to the jurisdiction of a certified State authority is subject to the jurisdiction of the Commission. In no event may a State authority exercise jurisdiction over general rate or inflation-based rate increases. Decisions of State authorities may be appealed to the Commission if not in accordance with this subtitle.

Third, it amends section 10103(a) to make explicit that where the Interstate Commerce Act provides an exclusive remedy, such remedy is not in addition to remedies under another law or at common law.

Finally, it amends section 10501 by adding a new paragraph providing that the jurisdiction of the Commission and of certified State authorities over rail transportation, as well as the remedies provided with respect to rail rates, classifications, rules and practices are exclusive.

Conference substitute.—The Conference substitute adopts the House amendment, except that the Commission's power to adjust intrastate rates is retained in the event that actions by certified states impose a burden on intrastate commerce. The conferees' intent is to ensure that the price and service flexibility and revenue adequacy goals of the Act are not undermined by state regulation of rates, practices, etc., which are not in accordance with these goals. Accordingly, the Act preempts state authority over rail rates, classifications, rules and practices. States may only regulate in these areas if they are certified under the procedures of this section.

The remedies available against rail carriers with respect to rail rates, classifications, rules and practices are exclusively those provided by the Interstate Commerce Act, as amended, and any other federal statutes which are not inconsistent with the Interstate Commerce Act. No state law or federal or state common law remedies are available.

SECTION 215—BUSINESS ENTERTAINMENT EXPENSES

Senate bill.—No provision.

House amendment.—The House amendment adds a new section 10751 to subchapter III of chapter 107 of title 49 U.S.C. to provide that business solicitation or entertainment expenses incurred by

rail carriers do not constitute illegal rebates or discrimination, if these expenses would be legal when incurred by a non-Commission regulated entity. The House amendment treats rail carriers in a similar manner as other businesses.

To discourage excessive solicitation or entertainment expenses, these expenses are not to be taken into account in determining the cost of service or the rate base for rate regulation purposes.

The Commission is directed to institute a rulemaking proceeding to establish standards and guidelines for authorized expenses under this section.

Conference substitute.—The Conference substitute follows House amendment. It amends Section 10751 of Title 49 U.S.C., which was added by the Motor Carrier Act of 1980, by striking out "other than transportation by rail". In addition, Subsection (b) of Section 215 makes clear that Section 10751 should be construed so as to include any permissible business expense that was incurred prior to the effective date of this Act (other than expenses on which a penalty has been paid) or that is incurred on or after such date.

SECTION 216—EFFICIENT MARKETING

Senate bill.—The Senate bill amends 49 U.S.C. 10762(c)(3) to permit new or increased rates to become effective 20 days after the notice of such rate is published and filed, but delayed the effective date of this change for 60 days. The Senate bill also leaves contracts and demand-sensitive tariffs subject to the provisions of existing law that require that tariffs shall not become effective on less than 30 days notice.

House amendment.—The House amendment reduced the period after which tariffs increasing rates can become effective to 10 days and the period after filing tariffs which reduce rates can become effective to 5 days after filing. The House amendment also permits the Commission to reduce the notice period if cause exists. The House amendment establishes a separate filing procedure for contracts in the contract section.

Conference substitute.—The Conference substitute permits tariffs increasing rates to become effective upon 20 days notice and tariffs reducing rates to become effective upon 10 days notice. The Conference substitute does not change existing law which permits the effective dates of tariffs to be reduced upon cause shown.

SECTION 217—JOINT RATES

Senate bill.—The Senate bill authorizes a carrier to publish a surcharge without the concurrence of other carriers if the surcharge is applied in equal dollar amounts to all of the routes participated in by that carrier between the same points as if an increase in joint rates, to all of its competing single-line routes between each such origin and destination. The change in revenues shall accrue solely to the carrier applying the surcharge.

The proposing carrier must give 45 days' notice to other carriers party to the joint rate.

A carrier which participates in any route subject to a surcharge may by tariff cancel the application of such surcharge to any route if such carrier demonstrates that, under the applicable joint rate

without the surcharge or under a new lawful rate or division concurred in by the carrier, the surcharging carrier's revenues for its participation over such route are less than 110 percent of its variable costs.

A carrier may not apply a surcharge unless, for 1 year prior to the surcharge, it has participated in all increases in rates of general applicability agreed to by other parties to the rates.

Only the carrier proposing a surcharge shall be required to defend the surcharge, and the lawfulness of the surcharge shall be determined without regard to the amounts received and the services performed by other carriers party to the joint tariff to which the surcharge is applied.

A rail carrier may, without the concurrence of any connecting rail carrier, publish surcharges applicable to traffic originating or terminating upon any line of railroad originating and terminating less than 3 million gross ton miles of traffic per mile in the most recent calendar year for which traffic data are available if, prior to the application of any such surcharge, the through charges applicable to traffic to and from any such line do not provide the surcharging carrier revenues adequate to cover 100 percent of the reasonably expected costs (including the cost of capital) of continuing to operate the line involved. The change in revenues resulting from any such surcharge shall accrue solely to the carrier applying the surcharge.

A carrier may cancel the application of a joint rate to any through route without the concurrence of any connecting carrier unless another carrier party to the rate over that route demonstrates that the canceling carrier's share of revenue under the canceled rate is not less than 110 percent of the canceling carrier's variable cost of providing service over that route.

The carrier would be required to provide an estimate to class III carriers or other parties upon a showing of good cause in developing necessary data to challenge surcharges. The Commission's Special Council is authorized to assist class III carriers in actions brought under this section.

House amendment.—Consistent with the goal of preserving a financially stable, private sector rail system set forth in section 3 of the amendment, section 301 establishes procedures by which rail carriers which do not earn adequate revenues under existing joint rates and divisions can surcharge such rates or cancel their application to particular routes without the concurrence of other carriers. The purpose of this section is to insure than no rail carrier will be compelled to carry goods unless its share of the revenues from the joint rate, including any surcharges, is at least 110 percent of the carrier's variable cost of providing the particular services involved. In addition, for light density lines owned by a single carrier which carry less than 3 million gross ton miles per mile of traffic, this section allows such a carrier to apply surcharges to recover in full its reasonably expected costs of providing services over such lines.

With respect to a particular route to which a surcharge has been applied under subsection (a) or to which the application of a joint rate has been cancelled, section 301 allows connecting carriers who participate in the route or shippers who demonstrate that they have no competitive alternative to the route to respond to provide

revenues to the surcharging or canceling carrier in excess of 110 percent of that carrier's variable cost. Alternatively, the connecting carrier may agree to a new division or new lawful rate or the carrier or a shipper in an affected route may petition the Commission to establish a new rate which is sufficient to produce revenues equal to 110 percent of the variable cost to the carrier proposing the surcharge or cancellation. Under either alternative, the surcharge would be cancelled or the application of the joint rate continued for that particular route. A surcharge to a light density line may be challenged by a shipper who has no competitive alternative to such line on the basis that the revenues generated exceed the surcharging carrier's reasonably expected costs of providing services over the particular line or that the shipper is bearing an unreasonable proportion of the reasonably expected costs. Special provisions are also included in section 301 to protect class III carriers from unfair competition as a result of action taken by another carrier under this section.

SECTION-BY-SECTION ANALYSIS

Section 301. This section amends chapter 107 of title 49 by adding a new section 10705a which provides standards and procedures for surcharging an existing joint rate or for canceling the application of a joint rate to a particular route to increase revenues for rail carriers earning inadequate revenues from existing joint rates and divisions.

Subsection (a) authorizes a carrier to apply a surcharge increasing or decreasing the joint rate for a particular movement between two points without the concurrence of other parties to the joint rate provided the surcharge is applied in equal dollar amounts to all routes for the movement under the joint rate in which the surcharging carrier participates and, if the surcharge increases the rate, to all single line routes of that carrier between the same points. A connecting carrier may cancel the application of a surcharge to a route in which it participates by demonstrating that the surcharging carrier's revenues over that route without the surcharge exceed 110 percent of the surcharging carrier's variable cost or by putting into effect a new division or a new lawful rate which provides the surcharging carrier 110 percent of its variable cost. In addition, a shipper showing that it has no competitive alternative to that route and a carrier in the affected route, may petition the Commission to cancel the application of a surcharge to a particular route by showing that the surcharging carrier's revenues with the surcharge exceed 110 percent of variable cost. The Commission must then authorize the surcharging carrier to apply a surcharge sufficient to generate revenues equal to 110 percent of the surcharging carrier's variable cost. The right of surcharge may be exercised by a particular carrier only once a year for a particular movement and only if that carrier has participated in all generally applicable rate increases to that joint rate for one year prior to the surcharge.

Subsection (b) authorizes a surcharge applicable to traffic which originates or terminates upon a light density line, owned by a single carrier, which carries less than 3 million gross ton miles of traffic per mile per year. The surcharge may be applied (in differ-

ent amounts to different traffic in order to optimize market relationships if necessary) whenever the revenues under existing rates do not cover 110 percent of the carrier's variable cost of transporting traffic to or from the line plus 100 percent of the carrier's reasonably expected costs (including the cost of capital) of operating the line. A shipper located upon a light density line to which a surcharge is applied may petition the Commission for two kinds of relief: (1) if it is established that the revenues generated by the surcharge exceed 100 percent of the variable cost of transporting traffic to and from the line plus all the reasonably expected costs of continuing to operate the line (including normalized maintenance and the replacement cost of equipment), the Commission may reduce the surcharge to the level needed to generate such revenues; and (2) if it is established that the complaining shipper would, by virtue of the surcharge, bear an unreasonable proportion of the reasonably expected costs of operating the light density line, the Commission may reallocate the surcharge among the traffic originating or terminating upon the line.

Subsection (c) authorizes a carrier to cancel the application of a joint rate to a particular through route subject to that rate. Another carrier participating in that route or the Commission, upon petition of a shipper having no competitive alternative to the route, may prevent the cancellation upon the same demonstration or by putting into effect the same type of new rate or division necessary to cancel a surcharge under subsection (a). When a cancellation is prevented in this manner, the Commission shall consider the cancelling tariff under the provisions of existing law relative to the cancellation of joint rates. If a cancellation becomes effective, the canceling carrier may establish a local or proportional rate for that movement. Any through rate of which that local or proportional rate is a part will divide as the separate factors of the through rate are made and not by prescribed divisions.

No matter when a surcharge or cancellation is challenged under this section, the issue to be decided by the Commission is whether the surcharge or cancellation met the standards of this section at the time it was filed and not at the time it is challenged.

Subsection (d) provides that revenue changes resulting from surcharges shall accrue to the surcharging carrier. Upon demonstration by an intraterritorial connecting class III carrier particularly in a surcharged route, and in the absence of any increase in the joint rate, revenues resulting from a surcharge under subsection (a) in excess of 110 percent of variable cost over that route will be divided with intraterriorial connecting class III carriers in that route on the basis of existing divisions. This section does not apply to revenues resulting from the diversions to a line but only to revenue directly accruing from the surcharge.

Subsection (e) provides that, when a carrier puts into effect a new rate or division in order to prevent a surcharge or cancellation from taking effect over a particular route, other carriers can require similar concessions on other routes under the same joint rate in which they participate, subject to the limitations set forth in this subsection.

Subsections (f) through (h) set forth ancillary provisions with respect to surcharges and cancellations regarding notice, effect upon other sections of title 49, and access to information from the Com-

mission regarding revenues and variable cost. In particular, subsection (g) provides that, except where specifically provided in this section, the Commission may not remedy a surcharge or cancellation found to violate another section of title 49 in a way which would require a carrier to provide service at less than 110 percent of variable cost for reasonably expected costs in the case of a light density line).

Subsections (i) through (k) set forth special remedial provisions available to class III rail carriers relative to surcharges under subsection (a) or cancellations under subsection (c). These provisions allow aggrieved class III carriers to protest surcharges or cancellations which are alleged to be anticompetitive, which will unduly affect the complaining carrier's ability to earn an adequate rate of return or which create unreasonable differences in existing rates. In these limited circumstances the Commission may order relief which requires a surcharging or canceling carrier to carry traffic at less than 110 percent of variable cost if it determines that such relief is warranted by the public interest in preserving rail service or ensuring competition among rail carriers.

Subsection (l) requires the Commission, upon petition by a participating class II or III rail carrier, to prescribe a new compensatory through rate when the application of a joint rate to a through route is canceled under subsection (c).

Subsection (m) sets forth the method for determining variable cost for purposes of this section.

Subsection (n) provides that the authority to make surcharges under subsection (a) expires three years after the effective date of the Act (unless extended for one additional year by the Commission), but that surcharges made before the date will continue to be lawful.

SENATE AMENDMENT TO HOUSE AMENDMENT—NO PROVISION

Conference substitute.—The Conference substitute adopts the House substitute, with modifications. Today, most of the property transported by rail moves over through routes subject to joint rates, and the revenue derived from these movements is divided among the participating carriers according to divisions generally prescribed by the Commission. The existing joint rates and divisions do not allow some rail carriers to recover even the variable cost of providing transportation services on certain through routes. Under existing law, unless all carriers participating in the joint rate concur, these rates and divisions can be changed only by protracted proceedings before the Commission.

Two of the major problems caused by the existing joint rate system are too low rate divisions and a proliferation of uneconomic routes protected by the archaic "commercial closing" doctrine.

The Conferees intend that the conference substitute will alleviate these problems in part by assuring that a carrier, with a minimum of regulatory interference will be able, by applying surcharges or directly cancelling routes, to either earn revenues over all lines equal to or exceeding 110 percent of unadjusted ICC formula variable costs or to close routes not providing this level of earnings and, in the case of railroads earning less than adequate revenues with lines carrying less than 3 million gross ton miles, to cover all

the costs of operating those lines. The same holds for railroads earning adequate revenues, except only with respect to lines carrying less than 1 million gross ton miles.

With regard to surcharges on light density lines, the conferees intend that such surcharges may not be imposed in a manner which would require shippers to pay for extraordinary occurrences (i.e. bridge washouts, landslides) in a short period of time. The Commission's proceeding should address this issue.

These provisions are intended to insure these results but they in no way imply an intent on the part of Conferees that a carrier's existing rights under the Act to secure improved earnings over specific routes should be limited. The Conferees recognize that a carrier cannot remain healthy only earning revenues at these levels, but believe that at this time the extraordinary provisions of this section are only needed to attain the revenue levels specified in this section and that existing remedies, assuming the Commission chooses to administer them in order to realize the revenue adequacy goals of the Act, should be adequate to remedy other joint route and division problems.

The key to the success of these provisions will be the ease with which they may be implemented by a surcharging or cancelling carrier. The Conferees intend that the revenue levels guaranteed by this section take precedence wherever possible to competing claims and that only where action is essential to protect vital public interests should the Commission or the Court act to frustrate the implementation of these provisions.

Administrative feasibility is also the reason the conferees have selected formula costs for use under all provisions except where otherwise specified; and the conferees encourage the Commission not to permit cost debates to delay the policy of this Act that carriers earn the full and reasonably expected costs of providing service on lines carrying less than 3 million gross ton miles for revenue inadequate carriers and 1 million gross ton miles for revenue adequate carriers. Only if carriers are able to cover all these costs can they expect to begin to invest to provide the service on which our nation's commerce depends.

In determining which carriers qualify as class III carriers, the Commission shall exclude any revenues not earned from freight operations, specifically excluding revenues from passenger service.

All of the provisions as described in the House amendment are available for class III rail carriers.

SECTION 218—EXPEDITED DIVISION OF REVENUES PROCEEDINGS

Senate bill.—The Senate bill amended section 10705(e)(1) of the Interstate Commerce Act by requiring the Commission to complete all evidentiary proceedings to adjust the division of joint rail rates within nine months if the proceeding is brought on complaint or within 18 months if the proceeding is initiated by the Commission. The Commission is required to take final action by the 180th day after the completion of evidentiary proceedings unless the Commission requires more time in which case it must report its reasons to Congress.

However, when the divisions 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 must give the proceeding preference over all other proceedings and must take action within the earliest practicable time. In no event may the Commission fail to act more than 100 days after the completion of the evidentiary proceedings.

House amendment.—The House amendment is the same as the Senate bill except it exempts division proceedings involving joint rates participated in by class III carriers.

Conference substitute.—The Conference substitute adopts the Senate provision, except that for a three-year period the expedited divisions provision shall not apply to class III carriers. The conferees intend that the Commission will modify its regulations governing divisions proceedings to insure that prefiling requirements do not frustrate the purpose of the Congress to expedite divisions proceedings as much as possible. The conferees also expect the Commission to examine closely alternative means of dividing revenues among carriers in a manner which might better reflect market conditions than the crude, across the board divisions which now apply regardless of the specific economic conditions of the carriers involved and the markets they serve.

SECTION 219—RATE BUREAUS

Senate bill.—The Senate bill modified some of the activities which a rate bureau may permit its members to engage in if it is to be approved by the Commission.

First, intrastate rates affecting interstate commerce may be set collectively in the same manner as interstate rates.

Second, the extent of carrier discussion of single line rates and interline rates related to a particular interline movement is defined and limited.

Third, sound recordings or transcripts must be kept of bureau proceedings, submitted to the ICC and made available to any other federal agency with jurisdiction.

House amendment.—The House amendment modified the activities which a rate bureau may permit its members to engage in if it is to be approved by the Commission and its members are to be immune from the application of the antitrust laws.

First, no carrier may discuss, vote or agree on single line rates proposed by another carrier. The Commission may allow such discussions for general rate increases only if it finds that the implementation of the limitation is not feasible.

Second, no carrier may discuss a joint line rate unless it practicably participates in the movement. The term "practicably participates" is to be defined by the Commission.

Third, after January 1, 1984, or earlier, if the Commission decides, unless the Commission finds it is not feasible, no carrier may discuss a joint line rate where there are two routes between the same end points, except with a carrier that forms part of a particular single route.

Until January 1, 1983, such carriers may discuss general increases for joint rates and broad tariff charges, if the rate bureau has a special procedure allowing shippers to comment prior to the filing of the tariff with the Commission.

Fourth, employee protective provisions are provided for rate bureau employees affected by this section.

Fifth, in any proceeding in which an antitrust violation is alleged concerning a rail carrier the party making the allegation shall have the burden of proving the violation by clear and convincing evidence. Proof of the violation may not rest on or be inferred from evidence that two or more carriers acted together with respect to an interline movement and that one of the parties took similar action with respect to a competitive route.

Sixth, transcripts or sound recordings must be kept of bureau meetings and submitted to the ICC and made available to other federal agencies with jurisdiction.

Conference substitute.—The Conference substitute adopts the House amendment with modifications. The Commission shall define "practicably participate" for determining when a carrier participates in a movement. The Conferees believe that railroads, shippers, and consumers will benefit from increased rail to rail competition, and expect that the Commission will interpret the term in a manner which encourages competition while maintaining a rail system which functions efficiently.

The Conference substitute extends the date by which the Commission must eliminate general rate increases by one year, to January 1, 1984. General rate increases are also limited to inflationary cost increases. Rate bureau discussions are limited to joint movements where carriers have an actual interline movement by January 1, 1984, unless the Commission acts sooner. Car compensation, demurrage, and car allowances are not considered single-line rates.

The Conferees wish to emphasize that nothing in the new law will prevent a carrier from publishing broad territorial rate changes in a tariff.

Because of the requirement that carriers concur in changes to joint rates, carriers must talk to competitors about interline movements in which they interchange. That requirement could falsely lend to conclusions about rate agreements that were lawfully discussed. To prevent such a conclusion the Conference substitute provides procedural protections about lawful discussions and resulting rates. The Conferees intend that these protections be construed to insure that remedies for anti-competitive activities remain under existing laws.

SECTION 220—LONG AND SHORT HAUL TRANSPORTATION

Senate bill.—No provision.

House amendment.—The House bill amended section 10726 by limiting the provisions of existing law to rates applicable to grains, soybeans, rice or cotton or to situations in which the Commission determines that competition exists between rail and water carriers and the provisions are necessary to prevent anti-competitive behavior. The House amendment also repealed 10726(c) which limited a rail carrier's ability to increase a rate which had been previously decreased to meet water carrier competition.

Conference substitute.—The Conference substitute repeals 10726(c). The conferees repealed this subsection in order to encourage flexible and innovative pricing by railroads. The conferees' decision to otherwise retain the existing section 10726 is not to be

construed to indicate that the Commission is not to take steps consistent with the policy of this act to reduce barriers to market-oriented pricing without the need for prior Commission approval.

SECTION 221—RAILROAD ENTRY

Senate bill.—The Senate bill changes existing law to permit easier entry, consistent with the policy of this Act to encourage greater reliance on marketplace forces than on government regulation.

Under present law, the Commission may authorize the construction of a railroad only if it finds that the public convenience and necessity "require or will be enhanced" by the construction. This is a more stringent test than that applied to either the abandonment of rail lines or mergers. There does not appear to be any reason why the Commission should apply a more difficult standard for the construction of new facilities than for the abandonment of old facilities. The Senate bill changes the test applied by the Commission from "require or will be enhanced" to "require or permit".

When a railroad has been issued a certificate of public convenience and necessity by the Commission and where the construction or extension of that line would cross another carrier, it is unclear whether the second railroad could block the construction by refusing to let the first railroad cross another carrier. The Senate bill provides that when a railroad has been issued a certificate of public convenience and necessity, no other railroad may block construction by refusing to let the first railroad cross its property, provided that the construction and operation do not materially interfere with the operation of the second railroad and the owner of the crossing line compensates the owner of the crossed line. If the railroads cannot agree on the terms of compensation, the Commission may establish the compensation.

House amendment.—The House amendment changes the standard under 49 U.S.C. 10901 for the construction or extension of a rail line from requiring the Commission to find that the "public convenience and necessity require or will be enhanced" by the construction or acquisition (or both) and the operation of the railroad line to requiring the Commission to find that the "public convenience and necessity permit the construction or acquisition". The House amendment permits one railroad that has been issued a certificate of public convenience and necessity to cross the property of another carrier if the construction does not unreasonably interfere with the operation of the crossed line, the operation does not materially interfere with the operation of the crossed line and the owner of the crossing line compensates the owner of the crossed line. If the carriers are unable to agree to the terms of operation or compensation, either party may submit the matters in dispute to the Commission. The House amendment requires the Commission to impose employee protection under 49 U.S.C. 11347 upon any rail carrier proposing to both construct and operate a new railroad line. If a rail carrier rearranges or adjusts its work force in anticipation of a transaction with the purpose of depriving an employee of benefits under this title, the provisions of this title apply to such employee.

Conference substitute.—The Conference substitute adopts the House amendment, but makes employee protection discretionary and drops the provision regarding deprivation of employee benefits in anticipation of a transaction. The Commission does not have authority over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team switching, or sidetracks, if the tracks are located, or intended to be located, entirely in one state (49 U.S.C. 10907). The Committee does not intend that new subsections added to 49 U.S.C. 10901 shall expand the Commission's jurisdiction. If the construction or extension of a line of railroad would be otherwise exempt under 49 U.S.C. 10901, there should be no reason to obtain a certificate of public convenience and necessity even if the constructing railroad reaches a voluntary agreement to cross another carrier's line. Only if a dispute is submitted to the Commission would there be a need to obtain a certificate of public convenience and necessity. This certificate could be sought at the same time as the dispute is submitted to the Commission. The Conferees wish to emphasize that if a certificate would not otherwise be required under section 10907, the certificate should be issued routinely and that its purpose is (1) to assure Commission jurisdiction under 10901(d) and (2) to assure that the crossing carrier has its right to serve a shipper sanctioned by the Commission.

SECTION 222—SERVICE DURING PERIODS OF PEAK DEMAND

Senate bill.—No provision.

House amendment.—The House amendment provides that a rail carrier may not be found to have violated its common-carrier obligation under 49 U.S.C. 11101 to provide transportation or service on reasonable request if it fulfills its commitments under contracts for the shipment of goods before responding to reasonable requests for service.

Conference substitute.—The Conference substitute adopts the House amendment. However, this provision does not abrogate the power of the Commission to refuse to approve contracts on the grounds that they will impair a carrier's ability to meet its common carrier obligation.

SECTION 223—RECIPROCAL SWITCHING

Senate bill.—The Senate authorized the Commission to require railroads to enter into reciprocal switching where it finds such agreements to be practicable and in the public interest. In many parts of the country, reciprocal switching agreements are in effect where carriers pick up and deliver traffic for other railroads. In areas where reciprocal switching is feasible, it provides an avenue of relief for shippers where only one railroad provides service and it is inadequate. The standard "practicable and in the public interest" is the same standard the Commission has applied in considering whether to order the joint use of terminal facilities.

House amendment.—The House amendment is the same as the Senate bill, but permits the Commission in its discretion to order protection for employees who are adversely affected by a grant of authority by the Commission under this section.

Conference substitute.—The Conference substitute adopts the House provision. The Conferees note that the Commission should use the "practicable and in the public interest" standard even though section 11123 has been expanded to include all facilities, not just the joint use of terminals. The Conferees note that the entry and reciprocal switching provisions should not be used to allow Class I carriers to force their way into traffic originating or terminating on a Class III carrier.

SECTION 224—CAR SERVICE COMPENSATION

Senate bill.—No provision.

House amendment.—The House amendment repeals section 11122(b)(2) which allowed the Commission to impose incentive per diem rates.

The House amendment also provides that when shippers enter into an agreement to discuss what they will propose to charge rail carriers for the use by such rail carriers of rolling stock owned or leased by such shippers, they shall apply to the Commission for approval of the agreement. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the rail transportation policy in section 10101a of this title. The Commission may require compliance with conditions necessary to make the agreement further the rail transportation policy. If the Commission approves the agreement, any action by a party under its terms or the terms required by the Commission shall receive antitrust immunity under section 10706(a)(2).

The House amendment also provides that where the shippers who have entered into an agreement approved by the Commission and the rail carriers proposing to use the rolling stock owned or leased by the shippers cannot agree upon the amount of compensation to be paid for the use of such rolling stock, any party directly involved in the negotiations may settle the matter by submitting the issues in dispute to the Commission. The Commission shall render a binding decision on the issues based on a standard of reasonableness. The Commission's decision may consider any past precedents on the history of the negotiations and must be rendered within 90 days of the submission of the dispute to the Commission.

Conference substitute.—The Conference substitute adopts the provisions of the House amendment and adds a provision which states that the law in effect prior to the effective date of this Act with respect to the obligation of rail carriers to utilize rolling stock owned or leased by shippers shall remain in effect.

The conferees do not believe that the provision of an incentive element on freight equipment is the best means of attracting capital into the industry for the acquisition of rolling stock. Rather, the rental rate for such rolling stock should be sufficient to pay an adequate return on investment. The conferees do anticipate, however, that the Commission shall continue to examine means (such as flexible car hire) of making basic car hire more responsive to market forces where this is possible without subjecting carriers which are forced to use cars received in interchange to unreasonable rates.

The conferees intend that marketplace decisions govern the railroad industry and its relationship with shippers. Indeed this policy is enunciated in the rail transportation policy. The conferees expect that antitrust immunity be granted under this section consistent with previous Commission decisions. The conferees are aware that shippers could have antitrust immunity to establish private car-hire when participating in a Commission proceeding and do not intend that this provision shall change existing law in that regard.

If the Commission allows per diem rates below basic per diem during periods of surplus car supply, the Commission should allow rates above basic per diem during periods of shortage.

SECTION 225—CAR UTILIZATION

Senate bill.—The Senate bill created a new section 10732 of the Interstate Commerce Act. This section provides that rail carriers are free to establish a special elective tariff which contains premium freight rates for special services or levels of services that may be requested by a shipper. Throughout Senate hearings on rail regulatory reform, testimony was submitted by many shippers who advised that they were prepared to pay a higher rate for a higher level or a more expeditious service. This amendment will give those shippers that option and, in turn, allow the rail carriers to increase the utilization of their cars.

Essentially, this subsection allows carriers to privide a more specialized service to shippers who choose to pay the premium rate, but the common carrier obligation is not abrogated in any way. This will insure that the shipper is still guaranteed the same level of service that he receives today. This subsection is simply another option for the shipper and the rail carrier.

House amendment.—No provision.

Conference substitute.—The Conference substitute adopts the Senate provision, with an amendment.

SECTION 226—CAR SERVICE ORDERS FOR EXIGENT CIRCUMSTANCES

Senate bill.—The Senate bill limited the Commission's authority to issue car service orders under 49 U.S.C. 11123 in two ways. First, the Commission would be restricted to emergencies "of such magnitude as to have substantial adverse effects on rail service to the nation or a substantial region of the nation". Second, the Senate bill restricted emergency orders to 30 days, but permitted the Commission to extend the order another 60 days if the Commission had a proceeding to resolve the service problems which generated the need for the emergency order on a more permanent basis. The two restrictions were adopted based on the belief that only real emergencies should trigger such orders and that in the past, the Commission has been far too willing to issue car service orders in other than emergency situations. The Senate bill removed the limitation in existing law that the Commission may order only the joint or common use of terminals, including mainline tracks for a reasonable distance outside of those terminals. The Commission would be permitted to require the joint or common use of all facilities when

it considers that a shortage of equipment, congestion of traffic, or qualifying emergency exists.

House amendment.—The House amendment limited the Commission's authority to issue car service orders under 49 U.S.C. 11123 in instances where it finds a "shortage of equipment, congestion of traffic or other failure in traffic movement exists which creates an emergency situation resulting in substantial adverse effects of rail service in the United States or a substantial region of the United States". The House amendment requires the Commission to find a nationwide emergency or broad regional emergency that justifies the extraordinary remedy of the imposition of car service orders. The House amendment permits the Commission to extend such orders beyond 30 days if the Secretary of Transportation certifies that a transportation emergency exists. The House amendment permits the Commission when it makes the prerequisite findings to require the joint use of all facilities, not just terminal and mainline tracks a reasonable distance outside those terminals. This provision will permit the Commission to effectively address genuine emergency situations in an expeditious manner without restrictions regarding the use of a railroad's facilities, including mainlines and equipment by another railroad or over that railroad. This provision specifically overrules the decision in *Atchison, Topeka and Santa Fe* v. *ICC*, 617 F. 2nd 485 (7th Cir., 1980). When the Commission does require one railroad to use or go over another railroad's facilities, the Commission shall require, to the maximum extent practicable, the use of employees who would have performed work in connection with the traffic subject to the action of the Commission.

Conference substitute.—The Conference substitute adopts the House provision, but authorizes the full Commission after a hearing to determine that a transportation emergency exists if the original 30-day order is to be extended. The conferees emphasize that the Commission's powers under this section are extraordinary and should be exercised only in genuine emergencies. Some shipping interests have expressed concern as to the scope of this section. An important distinction must be borne in mind. Section 11123 of title 49 is being amended as to the required regional or national type emergency before the Commission can issue car service orders, as well as the duration and the scope of the car service orders.

The Conferees want to emphasize that the provisions of section 11122 of title 49 of the United States Code as to permanent rules and regulations on railroad car service are unaffected and remain intact. The importance of insuring on a day-to-day basis the efficient functioning of our unified national rail system and network remains. The Commission still retains its power to issue permanent mandatory car service rules such as those which are now in effect and which govern the movement of railroad cars throughout the country.

SECTION 227—EMPLOYEE PROTECTION

Senate bill.—No provision.

House amendment.—The House amendment provided for employee protection, as described in 49 U.S.C. 11347, to be imposed in transactions involving transfers or the operation of or over a dest-

or's lines by another entity under section 1172(b) of the Bankruptcy Act of 1978. The provision puts employees of rail carriers which entered bankruptcy after the effective date of the Bankruptcy Act of 1978 in the same position as employees of rail carriers that entered bankruptcy prior to the Bankruptcy Act of 1978 with respect to employee protection. This provision is not intended to change existing law with respect to either the priority or the timing of payment of employee protection in a bankruptcy proceeding.

Conference substitute.—The Conference substitute follows the House provision.

SECTION 228—MERGERS AND OTHER TRANSACTIONS

Senate bill.—The Senate bill would make no changes in the present law with respect to major rail mergers: the ICC would consider such proposals under existing standards and procedures, and the present time limit of about 31 months (which was established by the 4R Act) would be retained. However, this section makes two major changes in the present law under which the Commission is required to consider all other restructuring transactions among railroads (including the purchase or sale of assets, trackage rights, and the like). These changes are intended to encourage the rationalization and restructuring of the rail system through actions less than merger.

First, the Commission would have to decide on smaller transactions faster than under present law. Present law permits the Commission 15 months to decide all such cases regardless of their complexity or importance. For transactions having regional or national significance, this section would require the Commission to reach a decision within 10 months. For transactions which do not have regional or national transportation significance, this section would require the Commission to reach a decision within 6 months. These deadlines are, of course, maximum time limits and the Committee believes that many applications can and should be processed without taking the full amount of time allowed.

In order to meet the deadlines specified in this section, the number of factors the Commission must consider in ruling on transactions less than merger would be reduced. (The Commission now applies the same test to all transactions as to major mergers.) This section would require the Commission to balance the transportation benefits of the transaction against any anticompetitive effects. In addition, where the transaction is part of a restructuring project previously approved by the Secretary of Transportation under section 401 of the 4R Act, the Commission would be required to give substantial weight to the recommendations of the Secretary.

House amendment.—The House bill contains a provision relating to the factors the Commission is required to consider when passing on major mergers. The House provision would require the Commission to consider whether the proposed transaction would have an adverse effect on competition among rail carriers.

Conference substitute.—The Conference substitute includes a combination of the House and Senate provisions. The conferees note that many transactions for which Commission approval is required are minor in nature and routinely approved. The Committee believes that the Commission should focus its attention on more

important issues and judiciously use its statutory authority to reduce the burden on all parties (including a reduction in paperwork) where approval is routinely and consistently granted.

SECTION 229—SAVINGS PROVISIONS

Senate bill.—The Senate bill provided that a rail rate in existence on the date of enactment of this Act could only be challenged as being not reasonable within 270 days after enactment. Such rate would not be found not reasonable if its revenue-to-variable cost ratios did not exceed the average ratio of revenue-to-variable cost established by the Commission.

House amendment.—The House amendment provided that any rate for a carrier in effect on the effective date of this Act could be challenged within 180 days of that date in a complaint filed with the Commission alleging that the carrier had market dominance under section 10709 over the particular route to which the rate applied and that the rate was not reasonable under new section 10701(a). If a rate in effect upon enactment has not been challenged within 180 days or was challenged and found to be reasonable, the rate could not again be challenged before the Commission or any court.

The savings provisions would not apply to any rate under which the volume of traffic moved during the 12-month period immediately preceding the effective date did not exceed 500 net tons where such rate has increased tenfold in the 3-year period immediately preceding the bringing of a challenge to the increase of such rate.

In all cases under this section, the burden of proof is on the complainant.

Conference substitute.—The Conference substitute adopts the House bill. This Conference substitute allows a 180-day period from the effective date of the bill in which existing rates may be challenged as unreasonably high under the procedures of 11701. The Conferees do not intend this right to be construed as creating any presumption as to the reasonableness of the rates subject to challenge. The purpose of this provision is to give affected parties a final opportunity to review the reasonableness of existing rates before their opportunity to challenge those rates is curtailed. Any challenges arising under this section shall be limited by the jurisdictional standards otherwise newly adopted in the Staggers Rail Act of 1980.

SECTION 301—UNIFORM ACCOUNTING SYSTEM

Senate bill.—No provision.

House amendment.—The House amendment makes section 11142, which requires the Commission to prescribe a uniform cost and revenue accounting and reporting system applicable only to non-rail carriers. Previous accounting and reporting systems developed by the Commission for rail carriers are to be replaced by the accounting and reporting requirements of Title III of the amendment.

Conference substitute.—The Conference substitute is the same as the House amendment.

SECTION 302—RAILROAD COST ACCOUNTING

Senate bill.—No provision.

House amendment.—The House amendment establishes a Railroad Accounting Standards Board, consisting of seven members and chaired by the Comptroller General of the United States. The purpose of the Board is to develop cost accounting principles which identify—variable costs which accurately represent the economic costs of rail movements.

The Board, in developing principles, is to take into account several factors concerning the regulatory purpose, the costs and benefits for rail carriers, and the least expensive way of obtaining the cost information.

The Commission is to promulgate rules to implement the principles developed by the Board.

Within 180 days after enactment, each railroad must file a request with the ICC for preliminary certification, which is to be granted if the carrier's cost accounting system is in compliance with the ICC accounting principles in effect on the date of enactment. The Conferees do not envision the requirements for preliminary certification to be any more than a simple affirmation that the carrier is meeting and will continue to meet the existing requirements of the Commission.

The Commission shall grant final certification if it finds that a carrier's accounting system is in compliance with the rules promulgated by the Commission, under the principles of the Board.

Each rail carrier is to maintain a system that is in compliance with rules promulgated by the Commission, under the principles of the Board.

Rail carriers are required to make cost data available to parties to a Commission proceeding.

In order to obtain expense and revenue information for regulatory purposes, the Commission may promulgate rules which prescribe expense and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to rail carriers. The Commission in promulgating rules for expense and revenue accounting and reporting requirements, shall ensure that such requirements are cost effective and not duplicative of the managerial and responsibility accounting requirements of carriers.

The Board shall file two reports with the Congress within 2 years after the effective date of this legislation. One report is to compare the cost of implementing the accounting standards to possible benefits. A second report is to recommend changes to the regulatory system, including maximum rate regulation, to integrate the new cost accounting standards and rules.

Conference substitute.—The Conference adopted the House provision with the following changes: First, the Conference substitute makes it clear that the primary purpose of the Cost Accounting Principles Board is to promulgate sound principles to govern the determination of railroad costs rather than detailed standards. Second, the Conference substitute limits the availability of cost evidence to that which the Commission will allow under its discovery rules. Third, the Conference substitute authorizes the appropriation of $1 million per year to carry out the functions of the Cost

Accounting Principles Board. Fourth, the Conference substitute limits the number of Board members to seven. Fifth, the Conference substitute requires that the Board conduct one study, recommending legislative or administrative action that may be necessary to integrate the cost accounting principles and certification process with the regulatory system, including maximum rate regulation. Sixth, the conference substitute makes certain technical changes to stress that the principles promulgated by the Board and the rules promulgated by the Commission are to emphasize the degree of economic accuracy needed for regulatory purposes and not merely the accumulation of more detailed, but not necessarily more accurate, accounting information.

The substitute clarifies the description of the type of principles to be determined in order to eliminate redundant language contained in the House bill. The Conferees intent is to provide for the most accurate possible statement of costs, both direct and indirect, associated with particular movements of goods, and the Board in developing its principles should consider the degree of relinbility with which such costs can be attributed to specific movements.

The Conferees expect that while the Board develops its principles, the Commission will continue its efforts to complete the uniform revenue and cost systems which it commenced after the passage of the 4R Act so that the Board, as part of its task, will be able to evaluate that system as it is developing its principles.

The conferees desire that the Board's principles will be sufficiently sound that they will be generally applicable for both regulatory and management purposes. To this end, railroads are to be afforded maximum possible freedom consistent with the commission's regulatory needs, to develop internal accounting and cost finding systems that are suited to the needs of the carriers themselves. The Conferees wish to emphasize, however, that the purpose of the Board's efforts is to develop a regulatory accounting system and that this section is not intended to limit the use of cost finding systems by railroads which railroads might find useful for management purposes.

The substitute allows, but does not require, the Commission to promulgate rules prescribing expense and revenue accounting and reporting requirements. In addition to other limitations in the bill designed to minimize the burden of such rules on carriers, the bill requires that to the extent they are required solely to provide expense and revenue information necessary for determining railroad costs in regulatory proceedings, the rules must comply with the principles established by the Railroad Accounting Principles board.

The Committee recognizes that the Commission has exempted Class III railroads from the Uniform System of Accounts. The Committee shares the view that elaborate accounting systems imposed upon smaller railroads could produce a much greater burden on the railroad than could be justified by offsetting public benefits. Thus, the Committee has left with the Commission the discretion to exempt carriers from the burdens of a Cost Accounting System if that seems desirable. We encourage the Commission to continue the practice of granting exemptions as needed to relieve unnecessary paperwork burdens and costs on small businesses.

SECTION 303—CIVIL PENALTIES FOR VIOLATIONS OF ACCOUNTING PRINCIPLES PROVISIONS

Senate bill.—No provision.

House amendment.—A carrier failing to obtain final certification of its cost accounting system is to be fined not less than $50,000. Any party to a proceeding who knowingly discloses confidential data made available by a railroad pursuant to this title may be fined up to $50,000.

Conference substitute.—The Conference substitute is the same as the House amendment.

SECTION 401—FEEDER RAILROAD DEVELOPMENT PROGRAM

Senate bill.—No provision.

House amendment.—To provide shipper groups and government agencies an alternative to inadequate rail service and to preserve feeder lines prior to the total downgrading of such lines, the House amendment provides for a feeder line development program which would require a rail carrier to sell a railroad line to a financially responsible person at a price not less than the constitutional minimum, if the Commission makes a finding that the present or future public convenience and necessity required or permited the abandonment or discontinuance of a railroad line, or if the Commission makes a finding that the transportation provided over a particular line is inadequate. Inadequate transportation is defined by five criteria. The Commission must affirmatively determine the existence of the conditions set forth in all five criteria as a prerequisite to the sale of a railroad line under this section. The burden of proving inadequacy of service is on the person filing to acquire the rail line.

The Commission may require the selling carrier to provide the acquiring carrier trackage rights if the acquiring carrier compensates the selling carrier for such trackage rights. If an acquiring rail carrier petitions the Commission for a joint rate, the Commission is required to grant such acquiring carrier a reasonable compensatory joint rate.

The carrier is exempt from sections 10901 and 10903 of the Interstate Commerce Act, except if an acquiring carrier participates in a joint rate. The feeder line development program permits an acquiring carrier to set conditions which shippers must meet as a prerequisite to using the line.

Conference substitute.—The Conference substitute adopts the House provision with several modifications.

First, the program is limited for the first three years to lines carrying 3,000,000 gross ton miles per year or less. After the third year any line is eligible for acquisition under the program but joint rates can not be mandated for lines acquired carrying more than 3,000,000 gross tons per mile per year.

Second, the feeder railroad program is not intended to surplant the branch line program under existing law. Where an application for abandonment has been actually filed with the Commission, existing provisions of the Interstate Commerce Act and of the Local Rail Service Assistance Act will be available.

Third, an opportunity is given for the Commission to allow a rail carrier a reasonable time to make the necessary efforts to provide

adequate service to shippers who transport traffic over a line in question.

Fourth, it is made clear that the Commission may require trackage rights to the acquiring carrier in order to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between non-contiguous feeder lines operated by the acquiring carrier. The Conferees recognize that one operator may acquire a number of non-contiguous branch lines thereby requiring the allocation of trackage rights in order to permit movement of power equipment between the non-contiguous lines.

Fifth, normal labor protection is afforded employees of the selling carrier and the provision requires the acquiring carrier to hire, to the maximum extent practicable, the employees who would normally have performed work in connection with a line subject to sale under the program.

The Conferees believe that the feeder line program will give shippers and communities an opportunity to insist upon adequate rail service. Where such service is not forthcoming the provision provides, through acquisition, a viable alternative to poor service or total abandonment.

SECTION 402—ABANDONMENT

Senate bill.—Section 202 of the Senate bill alters the existing provisions of the Interstate Commerce Act relating to abandonments of railroad lines. This section expedites abandonment proceedings by specifically setting forth time periods within which the Commission must act upon abandonment applications, depending on the complexity of and the opposition to the abandonment proceeding. For example, under existing law, there is no time limit within which an investigation of an abandonment application must be concluded. Section 202(c)(3) places a time limit of 135 days upon such investigations.

Section 202 repeals existing 49 U.S.C. 10905. New section 10905 creates a mechanism that requires railroads to sell a railroad line approved for abandonment to a financially responsible party if the financially responsible party has offered to pay the acquisition cost of the line or the difference between the revenues attributable to providing that service plus a reasonable return on the value of the line. Section 202 also requires rail carriers petitioning for abandonment of a railroad line to provide interested parties an estimate of the subsidy or the minimum purchase price required to keep the line in operation, calculated in accordance with the new provisions in 49 U.S.C. 10905.

The provisions in section 202 assist shippers who are sincerely interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings which are calculated merely to tediously extend the abandonment process.

House amendment.—No provision.

Conference substitute.—The Conference substitute adopts the Senate provision.

SECTION 403—CONVERSION OF ABANDONED RAILROAD RIGHTS-OF-WAY

Senate bill.—Section 305 of the Senate bill is an amendment to the original bill, S. 1946, the Railroad Transportation Policy Act of 1979. The section authorized $20 million over a 3-year period for acquisition of abandoned railroad rights-of-way for future use as bicycle paths, jogging and hiking trails and related transportation, recreation and conservation uses, as stated in section 809 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). This authorization includes matching Federal and State funds, with the Federal share being 80 percent and the State share being 20 percent.

The 4R Act authorized $20 million for fiscal year 1976, 1977 and 1978 to the Department of Interior for acquisition of abandoned railroad rights-of-way for conversion to trails related to transportation, recreation, and conservation. Based on this initial authorization $5 million was appropriated during the 95th Congress to Department of Interior Bureau of Recreation (now the Heritage and Recreational Services) for funding the Rail-to-Trail program.

The response to the Department of Interior's public notice of funding for the Rail-to-Trail program was very enthusiastic. The Department received 135 applications totaling $70 million. Because of the large response to the project, DOI felt they could be selective in the application approval. Top priority was given to applications for trails based or originating in metropolitan areas as well as trails used for commuter transportation.

Ten projects received funding from the $5 million appropriated. These 10 projects represent 111.62 miles of multiple-use trails from abandoned rail lines in 10 States. This is a small percentage of the 6,232 miles of nation-wide abandonments suitable for conversion to transportation and recreational uses.

Funding authority for this project expired as of September 30, 1979. This authorization will allow for the continuation of the Rail-to-Trail program started in the 4R Act. Evidence from State governments has shown intense interest in preserving funding for this program.

House amendment.—The House amendment has no provision.

Conference substitute.—The Conference substitute adopted the Senate provision, but reduces the authorization to $10 million.

SECTION 404—EXTENSION OF REDEEMABLE PREFERENCE SHARE FINANCING

Senate bill.—The Senate bill continues the existing redeemable preference share program for two years, until September 30, 1982, and it authorizes an additional $400 million for this purpose. The Senate provision expands the scope of eligible participants under the program and provides a specific allocation of program funds for labor cost associated with improved manpower effectiveness.

House amendment.—The House amendment extends the existing redeemable preference share program for two years.

Conference substitute.—The Conference substitute extends the redeemable preference share program until September 30, 1982. The funding provisions are discussed in the following section.

SECTION 405—FINANCING

Senate bill.—The Senate bill contains an amendment to section 511(a) of the 4-R Act. Section 511 of the 4-R Act is one of the financial assistance programs available to railroads for the acquisition, repair, or improvement of rolling stock and facilities associated with rolling stock. This amendment opens the doors of eligibility to this loan program to computerized car management systems which carriers desire to acquire, repair, or rehabilitate. Most railroads in this Nation operate sophisticated computer systems to follow their rolling stock throughout their rail network. These computers are essential to the efficient management of a railroad's car fleet. Unfortunately, as technology improves, many of the early computer systems have become obsolete. The new technology which is available would certainly pay for itself in a short period as a result of increased utilization of the car fleet. All loans under the 511 loan program are absolutely secured.

House amendment.—The House amendment authorizes the Secretary to provide assistance (either alone or as a participant with other investors) to any railroad or its subsidiary to achieve significant restructuring. The assistance may be used for the purchase of securities or the rehabilitation, improvement, or acquisition of facilities (including track, maintenance, equipment and related labor protection costs) which the Secretary, based upon a restructuring plan provided to the Secretary or as part of a restructuring project supported by the Secretary under section 5 (a)-(d) of the Department of Transportation Act, or both, determines will contribute to significant railroad restructuring that would not likely be achieved without Federal assistance. The assistance may also be used for purchase or rehabilitation of feeder lines. States, communities, or shipper groups that intend to purchase a feeder line are to be considered railroads for the purposes of this section.

Senate amendment.—The Senate amendment extends the existing section 505 to September 30, 1982, and authorizes an additional $400 million.

A new paragraph is added to section 505(b) to authorize the Secretary to provide a percentage not more than 20 percent of the total funds authorized for this program to employee or shipper groups formed pursuant to an employee and/or shipper stock ownership plan for the purchase and/or rehabilitation of rail lines or facilities. In determining the priority by which such groups should receive funding under this program, the Secretary is directed to consider the availability of other feasible alternatives for providing rail service. It is specifically intended that those projects without a viable or feasible alternative would receive a priority in the allocation of available funds under this section.

The Senate amendment adds a new section 505(A) to the current law granting the Secretary of Transportation the authority to provide Class I rail carriers with financial assistance to cover labor costs associated with operational improvements.

The Senate bill clarifies what specific actions would be considered a form of restructuring for the purposes of the 505 program.

Conference substitute.—The Conference substitute adopts the Senate provisions, but increases the authorization to $700,000,000, in section 505 funds. Conferees do not agree with any suggestion

that a legitimate need for rehabilitation of track cannot exist outside a restructuring. Conferees have provided for restructuring under the Milwaukee Railroad Restructuring Act and are expanding that under this bill to include purchase of rail assets as elements of an eligible project—but not necessarily priority elements. The Congressional intent in establishing the Preference Share Program under section 505 was to provide a "bank of last resort" to put money quickly into railroads to address the deferred maintenance problem while solutions to the overall financial shortfall in the industry could be developed. Much deferred maintenance remains. This Conference does not believe that now is the time to scrap the existing program, thereby forcing the marginal carrier to seek Federal assistance on terms more appropriate for healthy railroads.

The Conference substitute earmarks in the section 505 authorization $200,000,000, originally authorized in the restructuring provisions of the House bill, for automatic transfer by the Secretary to the United States Railway Association for use by Conrail in establishing a voluntary annuity program to reduce the size of its workforce. The money is to be transferred to the account under Section 216 of the Regional Reorganization Act, notwithstanding the authorization limitation of that section.

The Conferees intend for the Finance Committee of the Association to determine if (1) any program proposed by the Corporation will in fact reduce the size of the Corporation's workforce, and (2) funding of the program will result in substantial savings to the United States as measured against the probable costs to the Government of not reducing the Corporation's workforce to the extent contemplated by the institution of a voluntary early retirement annuity program.

To facilitate the institution of such a program subsection (b)(1) of section 405 amends Section 216(b) of the Regional Rail Reorganization Act of 1973 by adding paragraph (B) which makes it clear that employees of the Corporation taking advantage of an early retirement program will be deemed to have a "current connection with the railroad industry" so as to avoid losing Railroad Retirement eligibility at the appropriate age.

SECTION 406—TRANSACTION ASSISTANCE

Senate bill.—No provision.

House amendment.—The House amendment creates a new category for financial assistance under section 505(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210). Specifically, financial assistance would be available to purchase properties of the Milwaukee Railroad located in the State of Montana for rail banking.

Conference substitute.—The Conference substitute adopts the House amendment.

SECTION 407—ELECTRIFICATION LOAN GUARANTEES

Senate bill.—No provision.

House amendment.—The House amendment amends 211(f) of the Regional Rail Reorganization Act to make available to railroads in

addition to Conrail loan guarantees for the purpose of electrifying high density mainlines. Loan guarantees for capital improvements for coal export facilities are provided for Corporation and other railroads in the region receiving assistance under the 3-R Act.

Conference substitute.—The Conference substitute is the same as the House amendment, but the Secretary's authority to waive findings in 511(g) has been deleted. The Conferees expect that the loan guarantees for capital improvements for coal export facilities available under this section will be used to construct coal export facilities such as the proposed coal facility at the Port of Philadelphia.

SECTION 408—AMENDMENT TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

Senate bill.—No provision.

House amendment.—The House amendment raises the amount authorized to be loaned to any railroad in the region receiving assistance under section 211(d)(2) of the Regional Rail Reorganization Act of 1973, notwithstanding sections 211(e)(3) and (f).

Conference substitute.—The Conference substitute adopts the House provision.

SECTION 409—FEDERAL ASSISTANCE REPORT

Senate bill.—No provision.

House amendment.—The House amendment provides direction to the Secretary of Transportation on the coordination of federal assistance and also requires the Secretary to file an annual report on federal assistance provided to the rail industry, the reasons for each loan or grant, and the results to be expected.

Conference substitute.—The Conference substitute requires the study described above but does not include the directions for coordination to the Secretary.

SECTION 501—MONTHLY DISPLACEMENT ALLOWANCE

Senate bill.—No provision.

House amendment.—The House amendment proposed four new formulas for monthly displacement allowance as follows:

1. *Non-operating employees.*—Except for maintenance-of-way employees, non-operating employees (i.e., other than train and engine service employees) will receive an hourly guarantee, based upon the rate of pay of the position they held on September 1, 1979. This guarantee will be increased to reflect subsequent general wage increases, and will be increased whenever the employee, through the exercise of his or her seniority, becomes the qualified incumbent of a higher rated position. If, as a result of a reduction in the number of positions available, a protected employee is required to exercise seniority to a position with an hourly rate less than the guarantee, the employee will receive a monthly guarantee payment representing the hourly differential multiplied by the number of hours in the new position's straight-time work schedule for the claim month. If a protected employee is unable to retain any position, the employee will receive the guaranteed hourly rate for the number of hours the employee would have worked on a straight time basis if he or she had retained his or her previous position.

2. *Maintenance-of-way employees.*—The maintenance-of-way guarantee is based on average monthly compensation, which is total compensation received by an employee during 1974, divided by total time paid for, and multiplied by 174 or by average monthly time paid for, whichever is less, and adjusted to reflect subsequent general wage increases. The protected employee's monthly displacement allowance is the difference between the straight-time earnings and 80 percent of the average monthly compensation, less time lost due to voluntary absences other than vacations.

If, at the close of a calendar year, the sum of the employee's annual straight-time compensation, monthly displacement allowance payments, and offsets under this title are less than the employee's average monthly compensation divided by 12, the employee would receive an additional payment for the difference. If, in the previous calendar year, an employee has received displacement allowances payments greater than his annual guarantee, the excess benefits would be recovered from current or future entitlements, exclusive of moving expense benefits.

The House amendment also conforms the guarantee formulas for employees affected by a supplemental transaction to the revised guarantee formulas for other protected employees.

3. *Operating employees.*—It is proposed that operating employees (i.e., train and engine service employees) retain their current monthly guarantee subject to two important modifications. Average 1977 Conrail earnings will be calculated for each Commission classification of operating employees. These values will be upgraded by subsequent general wage increases, and will constitute maxima. These protected employees whose current monthly guarantees exceed the applicable maximum will have their guarantees reduced to the maximum. The second modification is an annual calculation in accordance with the maintenance-of-way formula described above. If a protected employee's earnings are less than the guarantee in any month, 75 percent of the difference will be paid. At the end of the calendar year, a comparison of guarantee and earnings on the annual basis will determine whether an additional payment will be made or whether future payments will be withheld pending recovery.

4. *Non-contract employees and employees who have been transferred.*—No change is proposed in the guarantee formula currently applicable to these employees. Non-contract employees receive salaries which do not include overtime compensation. Additionally, they receive merit increases rather than general wage increases, so that their guarantees have not changed since the formation of Conrail. Consequently, they have not been the recipients of "windfall" payments as is the case with contract employees.

Transferred employees retain their current guarantee. They have frequently purchased new homes at a price reflecting the standard of living they were assured of on the basis of the current guarantee formula. A sudden reduction in their monthly income might place them in an untenable financial position. There are approximately 350 employees who have transferred.

There are two other changes made in this section. Under subsection (b)(7), in addition to all unemployment compensation benefits and railroad earnings being set off against the employee's monthly displacement allowance (as under existing law), all outside earnings of a protected employee deprived of employment must be setoff against the employee's MDA. This change will ensure that the monthly displacement allowance of such protected employees are fully offset by other compensation.

An additional change is made by this section in proposed subsection (b)(10). It calls for employees deprived of employment, or the employees' class or craft representative, and the employer to agree on a procedure by which such employees will report their non-railroad earnings in order that they may be setoff against monthly displacement allowances. It also calls for an agreed upon procedure by which the employer is kept apprised of the unemployment benefits currently paid to employees deprived of employment, also for the purpose of off-setting their monthly displacement allowances. These procedures are necessary to ensure that the reporting/investigative burdens are shared by the employer and the employees, rather than having the burden of investigation fall solely on the employer, as now exists.

Senate amendment.—The Senate amendment is similar to the House amendment except for maintenance-of-way employee payments. Maintenance-of-way employees often work as portable equipment operators in the summer when extensive track rehabilitation is undertaken, and as trackmen in the winter when only routine maintenance can be performed. As a result of this circumstance, maintenance-of-way employees frequently earn less than their average monthly compensation in the winter and more than their average monthly compensation in the summer. When monthly displacement allowances during the winter months are added to these earnings, the employee's actual annual compensation can well exceed his or her annual compensation guarantee.

In order to correct this situation, a separate calculation is proposed for maintenance-of-way employees. Each protected employee will be assigned a monthly guarantee equal to the employee's 1974 average hourly earnings on a straight-time basis, upgraded by subsequent general wage increases, and multiplied by 174 (i.e., the number of hours in a straight-time work schedule in the average month). If a protected employee's current monthly guarantee is less than this value, the current guarantee will be retained. If, in any month, a protected employee's earnings are less than the guarantee, a payment will be due equal to 75 percent of the difference. At the end of the calendar year the employee's annual guarantee will be compared to his or her annual earnings plus monthly guarantee payments and any offsets. If the annual guarantee is larger, the full difference will be paid. If the annual calculation demonstrates that all or a portion of the monthly guarantee payments represent an overpayment, the employee will be entitled to no further guarantee payments until the overpayment is recovered. In the calculation of guarantee payments on the monthly and the annual basis earnings include overtime rate on any given day.

Conference substitute.—This follows the House provision. The conferees note that changes in the monthly displacement allowance formulas were necessary to eliminate expensive inequities in the current formulas. The conferees note that different formulas were provided for different classes and crafts of employees because of different procedures used to determine the basic wages of different classes and crafts of railroad employees and because the work

schedules of certain employees (such as maintenance-of-way employees) are subject to irregular and seasonal fluctuations. The conferees believe the use of these different formulas is rationally related to such differences among the classes and crafts and to the need to conserve scarce government resources.

SECTION 502—DURATION OF MONTHLY DISPLACEMENT ALLOWANCE

Senate bill.—No provision.

House amendment.—The House amendment would restrict the payment of the monthly displacement allowance in two situations. First, a protected employee's entitlement to a monthly displacement allowance would be suspended for the period that the employee fails to work for reasons beyond the control of his or her current employer due to strikes, flood, snowstorms, and similar natural occurrences. Second, the legislation would require a protected employee to claim a monthly displacement allowance within three months of entitlement unless the claim is the subject of or based upon an arbitration decision. It also would require that entitlement to claims be approved or denied within 150 days after a claim is filed for the first year following enactment and within 90 days thereafter, unless the employee and the employer agree upon other timeframes for filing and determining claims. This provision will eliminate bookkeeping problems caused by delay in filing a claim for a monthly displacement allowance, and enable the Corporation to assess more accurately expected payments for labor protection. The legislation further provides that unless denied within the timeframes by the carrier, the claim would be deemed approved.

Senate amendment.—The Senate amendment contains a similar provision.

Conference substitute.—The Conference substitute contains the provision in the House and Senate amendments.

SECTION 503—TRAINING AND TRANSFER

Senate bill.—No provision.

House amendment.—The amendment addresses restrictions on manpower utilization by permitting the Corporaton and other employers with protected employees to transfer such employees in the marine crafts and unemployed Penn Truck Lines, Inc. workers to another class, and by offering retraining programs to make the inter-class transfer provisions meaningful.

The new training and transfer provisions would apply to unemployed protected employees in the marine crafts and unemployed Penn Truck Lines, Inc. employees. No bona fide vacancies exist for these employees in their class or craft. Consequently, their guarantee payments represent a considerable ongoing liability.

Training expenses would be paid for by the Corporation or other employer, which could then be reimbursed from the Regional Rail Transportation Protective Account. Moving expenses incident to transfers would be reimbursable under the provisions of section 505(g), as is the case under existing law.

Senate amendment.—The Senate amendment is similar, with two exceptions. The power to transfer unemployed protected employees

is extended to employers besides the Corporation, and the multiple offer provision was not adopted.

The "multiple offer" provision establishes procedures that permit the Corporation and other employers to expedite reassignments by making simultaneous offers of a vacancy to no more than four employees at a time (those contacted employees junior to the least senior employee who accepts the vacancy will be furloughed or severed).

Conference substitute.—The Conference substitute follows the Senate bill, but retains the restriction in the House bill which allows only Conrail to transfer protected employees. However, the substitute permits Amtrak to transfer employees within their seniority districts unless Amtrak and the affected unions agree to negotiate an appropriate collective-bargaining agreement in this area.

The substitute also restricts use of the multiple offer provision to unemployed protected employees of the marine crafts and protected employees of Penn Truck Lines. Other employees would not be subject to the multiple offer provision.

SECTION 504—PAYMENT, AUDIT AND REPORT

Senate bill.—No provision.

House amendment.—The House amendment would redesignate section 509 of the 3R Act as section 509(a) and increase the amount of funds authorized to be appropriated under Title V by $235 million (of which up to $180 million could be spent on monthly displacement allowances) to a new authorization level of $485 million making training costs incurred by the Corporation under revised section 505d(4)(D) reimbursable costs, direct the Secretary of Transportation to be responsible for requesting needed appropriations for expenditure by the Railroad Retirement Board, and additionally authorize the appropriation of funds for administrative expenses incurred by the Railroad Retirement Board in performing their functions under section 509. The appropriations may be allocated by the Secretary to the Board and the Association.

It is proposed that an additional $235 million be authorized to fund the revised level of benefits afforded by these amendments. Conrail projects that this sum will fund the program. If in fact the cost of the program exceeds an additional $235 million, the carriers employing protected employees would be responsible for the payment of benefits without reimbursement.

In addition, this section would add two new subsections to section 509 that improve program auditing and reporting responsibilities upon the Association. Section 509(b) would direct the Association to conduct a program audit of the payment of benefits under Title V and evaluate the effectiveness of the provisions of Title V in providing a reasonable level of protection to protected employees and enabling the Corporation to improve management of the protected employees in its workforce. In conducting the program audit, the Association should be particularly sensitive to the impact of Title V provisions upon management policies, so that the Association will be able to suggest corrective legislation quickly in the event inequities are uncovered in the program or the way that the Corporation administers the program.

The Association would be afforded access to pertinent documents for the purpose of facilitating its program audit and evaluation functions. Section 509(c) would require the Association to transmit an annual detailed and comprehensive report of its periodic program audit and evaluation to the Congress and the President within 90 days after the end of each fiscal year.

Senate amendment.—The Senate amendment contains an identical provision to the House amendment.

Conference substitute.—This provision is contained in the substitute.

SECTION 505—RAILROAD HIRING

Senate bill.—No provision.

House amendment.—The House amendment provides for a right of first hire on other rail carriers for protected separated, or furloughed employees of Conrail. This right would not apply if an employee was separated for cause, or found to be less qualified than other applicants. The right would also not apply to any vacancy covered by a required or permissive voluntary affirmative action plan. This right is similar to that granted Milwaukee and Rock Island employees by recent legislation.

Conference substitute.—This follows the House provision.

SECTION 506—SINGLE COLLECTIVE-BARGAINING AGREEMENT

Senate bill.—No provision.

House amendment.—No provision.

Senate amendment.—The Regional Rail Reorganization Act of 1973, as amended, was based on a recognition that Conrail could succeed only if the predecessor bankrupt roads' operations were combined into a unified system.

A major component of that integration was addressed by section 504(d) of the 3R Act which required representatives of the various classes or crafts of the bankrupt carriers and representatives of Conrail to enter into negotiations for a single collective bargaining agreement for each class and craft of employees. This section was motivated by a recognition that the near countless existing labor agreements had to be replaced by negotiated collective-bargaining agreements for each class and craft.

Such negotiations were commenced and substantial progress has been made toward the goals of the Act. As a significant example, the United Transportation Union and Conrail, after extensive bargaining, concluded an agreement having far-reaching effects on labor costs of train movements while allowing the United Transportation Union members to share in the resulting savings. However, continued implementation of this collectively bargained agreement is imperiled by the findings of a U.S. Magistrate in the case of *Maloof v. United Transportation Union and Conrail*, issued March 27, 1980.

As the result of a suit brought by minority members of the union who wish to block the agreement, the U.S. Magistrate has concluded, among other things, that section 504(d) of the 3R Act does not require the negotiation of a single agreement for each class or craft. As a finding of fact, this conclusion must be considered to

have a substantial likelihood of adoption by the Federal District Court. Such an adoption would, in all likelihood, be accompanied by an order effectively terminating the United Transportation Union-Conrail agreement and allowing the continuation of regional distinctions in treatment among members of the same class or craft in opposition to the conclusions of the Final System Plan, and the clearly stated policy of Congress. Revocation of the detailed and comprehensive Crew Consist Agreement, on the strength of findings by a Magistrate, not only denies its benefits to a large number of United Transportation Union members but wipes out needed savings for Conrail.

Conference substitute.—The Conference substitute follows the Senate bill, with a clarifying sentence added to ensure that such a single collective bargaining agreement is negotiated systemwide. This follows the historical policy of the National Mediation Board that crafts or classes are to be certified systemwide, and negotiations conducted on a similar basis.

This section will make it absolutely clear that the intent of Congress was in 1973, has remained, and is today that Conrail is entitled to a single collective bargaining agreement with each craft or class of workers. The Magistrate's opinion was premised on what he described as an ambiguous phrase in the existing statutory language. This section should make it clear that the intent of Congress is that Conrail is entitled to a single agreement for each class and craft.

SECTION 507—EMPLOYEE PROTECTION PAYMENTS

Senate bill.—No provision.

House amendment.—The House amendment provided an effective data for the new formulas of the first day of the month following enactment.

Senate amendment.—The Senate bill provides that the new formulas are to be effective on the first day of the month following enactment. The Corporation and other employers with protected employees were to be reimbursed effective October 1 for any protective payments not previously reimbursed.

Conference substitute.—The Conference substitute adopts October 1, 1980 as the effective date.

SECTION 508—TECHNICAL AMENDMENTS

Senate bill.—No provision.

House amendment.—The House amendment makes technical changes to the Regional Rail Reorganization Act of 1973 and adds the Attorney General to the Board of Directors of the United States Railway Association.

The Secretary of Transportation and the Secretary of the Treasury are authorized to delegate their responsibilities under the 3R Act, including membership on the Board of Directors of the USRA and its committees, to the following designated representatives. The Secretary of Treasury may designate any officer of the Department whose position is confirmed by the Senate. The Secretary of Transportation is authorized to designate as his representative the

Deputy Secretary, the General Counsel, the Federal Railroad Administrator, or the Deputy Federal Railroad Administrator.

Subsection (d) amends the definition of "deprived of employment" in subsection 501(6) to exclude from the definition, and thereby excludes from coverage under the protection program consistent with changes made in section 4 of this legislation, failure to work due to Acts of God. Subsection (d) also adds a definition of "compensation" to section 501 so that it is clear the word means only earnings in employment subject to the Railroad Retirement Act rather than such earnings plus earnings from non-railroad employment and compensation for personal injury claims against the employer.

Finally, subsection (e) clarifies that the arbitration provisions that apply to disputes between the Corporation and its employees regarding the interpretation of Title V provisions do not restrict the newly-created audit and reporting responsibilities of the USRA.

Senate amendment.—The Senate amendment is similar to the House amendment but does not add the Attorney General to the Association's Board of Directors.

Conference substitute.—The Conference substitute follows the House amendment, but deletes the provision to include the Attorney General on the USRA Board of Directors.

Section 508(f) of the House amendment alters section 403(d) of the Rail Passenger Service Act to enable Amtrak greater flexibility in contracting for compensation for providing commuter services with the states. At present, the level of compensation is fixed at the "avoidable cost" level. Conferees expect that this provision will enable Amtrak to have the flexibility to contract for the value of services rendered and not result in commuter revenues below avoidable cost.

SECTION 601—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

Senate bill.—No provision.

House amendment.—The House bill amends section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) by providing that the Secretary of Transportation shall determine, after comments from interested parties, whether to propose a supplemental transaction under this section for the transfer of all rail properties of Conrail in Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that another rail carrier is financially and operationally capable of assuming Conrail's freight operations and freight service obligations in the area, that the transfer would promote the establishment and retention of a financially self-sustaining rail system in Connecticut and Rhode Island adequate to meet the needs of those states, and that the transfer would minimize job losses and associated increases in unemployment, should the Secretary develop such a proposal. After providing USRA and the ICC with an opportunity to review and comment on the proposal, the Secretary may petition the special court for an order to carry out the proposed transfer.

Notwithstanding any existing 508 agreements, a new employment agreement would be entered into between the parties to the transfer and affected employees pursuant to section 508. These agreements would involve the Corporation, but would not impose

additional obligations on the Corporation, which is neither an acquiring nor a selling carrier for the purposes of section 508.

The bill would also allow further supplemental transactions under the normal procedures of section 305 to occur by deleting the six year time limit provided in section 102(19) of the Act.

Conference substitute.—The Conference substitute adopts the House provision, but allows the States of Connecticut and Rhode Island to comment formally. The time period is also extended to 240 days.

If a proposal is sent to the Special Court, the Special Court shall use the procedures of existing section 305. If a transferee railroad is unwilling to accept the fair and equitable price established by the Secretary, the Secretary need not petition the Special Court. The Special Court may review the proposal to determine if it is in the public interest.

SECTION 701—ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

Senate bill.—No provision.

House amendment.—The House amends the Rock Island Transition and Employee Assistance and the Milwaukee Railroad Restructuring Act in several instances. The amendment provides that any decision with respect to constitutionality of the Rock Island Transition Act or the Milwaukee Railroad Restructuring Act from the respective courts having jurisdiction over the respective railroads in bankruptcy shall be taken to the United States Court of Appeals for the Seventh Circuit. If a constitutional challenge is made to the procedure under this provision, the challenge shall be heard by the United States Court of Appeals for the Seventh Circuit because the procedure is part of the Rock Island Transition Act. Should the appeals on constitutionality involve section 106 or section 110 of the Rock Island Transition Act or sections 9 or 15 of the Milwaukee Railroad Restructuring Act, regarding the claim of administration for employee protection claims, the court shall determine the appeals in a consolidated proceeding and render a final decision no later than 60 days after the last such appeal is filed.

The House amendment clarifies the Rock Island Transition and Milwaukee Railroad Restructuring Act to state affirmatively that nothing in these Acts shall limit the right of any person to bring an action under the Tucker Act. This provision was not in the original Acts on the grounds that there continued to exist a Tucker Act remedy where Congress has not explicitly waived such a remedy. See Regional Rail Reorganization Cases, 419 U.S. 102; 125 (1974). However, in reviewing Judge Garr's injunction of the Rock Island Transition Act, Justice Stevens expressed concern about the availability of such a remedy where the injunction to be lifted and were the Act subsequently to be held unconstitutional, —— U.S. ———— (1980). This specific provision clearly establishes that the Tucker Act is available and nothing in these Acts limits the right of any person to seek redress under the Tucker Act.

The House amendment provides for a new schedule for the negotiation of an employee protection agreement between the Rock Island Railroad and the labor organizations. If these parties are not able to come to an agreement within 5 days, the Commission is

to impose a fair and equitable arrangement no less protective of the interests of employees than the protection established under section 9 of the Milwaukee Railroad Restructuring Act within 15 days after the enactment of the Staggers Rail Act. The bankruptcy court shall order the Rock Island Trustee and the Rock Island employee organizations to implement such arrangement immediately. Any order of the Commission or the bankruptcy court with respect to implementing such order shall be appealed only to the United States Court of Appeals for the Seventh Circuit within 5 days after the order of the Commission or the bankruptcy court, whichever is later, and shall be determined within 60 days after the appeal is filed. Benefits and allowances under this arrangement shall be paid by the Rock Island Railroad and shall be treated as administrative expenses of the estate of the Rock Island Railroad. By specifically stating that there is a Tucker Act remedy, the benefits and allowances will immediately become available to the qualifying Rock Island employees and the Trustee may pursue his allegations of unconstitutional action under the Tucker Act.

Under Section 7(d), (e), and (f) of the Milwaukee Railroad Restructuring Act, certain obligations to the United States were subordinated to the creditors, but not the stockholders. Hence, there is a gap between these two classes of interests. The House amendment eliminates this gap, by forgiving such subordinated obligations to the United States when the Milwaukee Railroad is either successfully reorganized as a rail carrier or when more than 50% of the railroad as it exists on the effective date of the Staggers Rail Act is purchased and 50% of its employees on that date have obtained employment with other carriers. By eliminating this gap in this way, the House amendment will encourage the Milwaukee Railroad's stockholders to seek a successful reorganization or purchase and not feel it necessary to seek liquidation at this time.

Additional funds for Transaction Assistance under the Rock Island Transition Act for the purchase of abandoned lines by non-rail carrier entities of the Rock Island Railroad and Milwaukee Railroad and for rail banking of lines of the Milwaukee Railroad in Montana are made available. The Secretary may determine if applications for purchase filed after September 15, 1980, are appropriate. Other than the funds specifically reserved for Montana, Transition assistance funds should be equitably distributed without State preference to non-carrier entities which have applied for funds.

Conference substitute.—The Conference substitute adopts the House provision, with minor modifications and deletion of the new findings for the Rock Island Transition Act. The conferees believe that there is an obligation upon the Rock Island estate to provide employee protection as a claim of administration to its employees who were not covered by the March 4, 1980, agreement. Further, the conferees believe the Rock Island estate has benefitted from the Rock Island Transition Act by the reduction in its employee protection liability and through the Congressionally-supported March 4, 1980, agreement, the ability to lease its facilities and the use of funds to purchase its facilities, thus preserving its value as a going concern, and the expeditious consideration of Rock Island transactions at the Commission. The conferees reiterate that it is the intention of Congress that employee protection be imposed in

bankruptcy proceedings involving major rail carriers, for to do otherwise would be to promote liquidations, to the detriment of the employees and the public interest.

SECTION 702—LOAN GUARANTEES

Senate bill.—No provision.

House amendment.—The House amendment provides that the Secretary of Transportation shall not later than 45 days after the effective date of this Act, take final action on any application for a section 511 loan guarantee under the Railroad Revitalization and Regulatory Reform Act to be used in connection with joint ownership, construction or rehabilitation of any facilities for a second rail carrier to serve the Powder River Basin in Wyoming and Montana. This provision is included to promote needed competition for transportation of the low-sulfur coal from the Powder River Basin that is used by a great number of utilities in many states.

The Secretary is authorized to waive findings under 511(g) with respect to such loan guarantees, and section 4 (f) of the Department of Transportation Act is not applicable to such loan guarantees. However, the Secretary shall review the proposed Chicago and North Western connector and shall not approve any route which requires the use of agricultural land unless there is no feasible and prudent alternative to the use of such land and the proposed route construction plan requires all possible planning to minimize loans to such agricultural land. The Secretary shall review the use of any agricultural land in any new constructed line and shall require private land crossings for agricultural land owners whose land is divided by such line. When the Secretary requires the construction of a grade crossing, the Secretary shall require the land owner and the railroad to enter into agreements limiting the railroad's liability at such crossings.

Conference substitute.—The Conference substitute adopts the House amendment, but substitutes provisions regarding standards and deadlines for judicial review instead of the Secretary's discretion to waive findings under section 511(g) of the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210). It also makes clear that actions can be taken without prior approval of any Committee of Congress.

The standards and deadlines are borrowed from the Alaska Natural Gas Transportation Act, 15 U.S.C. 719h, and the Administrative Procedure Act, 5 U.S.C. 706. The reference to the phrase, "arbitrary, capricious, or an abuse of discretion" is an adaptation of 5 U.S.C. 706(2)(A). The reference to "in excess of statutory jurisdiction, authority or limitations, or short of statutory right" is an incorporation of the grounds for review provided in section 706(2)(C). The Conferees wish to emphasize that the other grounds for review set forth in section 5 U.S.C. 706(2) not in this section are intentionally excluded. Judicial review is to be confined to considerations of whether the agency complied with the Constitution and acted within its authority.

SECTION 703—CONRAIL STUDIES AND EMERGENCY FUNDING & USRA AUTHORIZATION

Senate bill.—The Senate bill requires USRA to submit preliminary recommendations by November 15, 1980, with regard to Conrail's future structure, activities and funding. Following review by the Department of Transportation and the Commission, and comment by interested parties, USRA is required to submit to Congress by March 1, 1981 specific final recommendations with respect to (1) future projected funding requirements of Conrail; (2) future structure and activities of Conrail in the region; and (3) legislative proposals, if necessary, to implement such recommendations. The Senate provisions also require specific studies to be completed in developing preliminary and final recommendations. Conrail is required to submit recommendations to USRA by October 1, 1980; it is also free to comment on the Association's preliminary and final recommendations. The provision includes an USRA authorization of $31.5 million for fiscal year 1981 and $27.5 million for fiscal year 1982.

A separate title of the Senate bill provides emergency funding for Conrail of $329 million for fiscal year 1981. This provision is intended to provide interim Federal funding for Conrail while Congress identifies alternative measures, including structural changes, based on the various studies and recommendations discussed above. The funding is conditioned upon a finding by the Finance Committee under section 216(b) of the Regional Rail Reorganization Act of 1973, as amended, that Conrail has taken appropriate action to eliminate losses on light density and unprofitable lines through negotiation of subsidy or trackage rights agreements, sale or lease, imposition of surcharges or abandonment of such lines. Expedited surcharge and abandonment procedures are provided for these light density and unprofitable lines. In addition, the Senate bill requires an economic analysis that will forecast the full effects upon Conrail and rail labor of alternative changes in labor agreements and related operational changes.

House amendment.—The House amendment does not contain any provision on Conrail studies or emergency funding. It provides an authorization for USRA of $28.5 million for fiscal year 1981.

Conference substitute.—The Conference substitute generally adopts the Senate provision with regard to Conrail studies. However, Conrail is given a larger role and will be required to submit a separate report and recommendations at the same time as USRA on the carrier's future funding requirements, future structure and activities, and legislative action which might be required. Conrail is to submit preliminary projections and recommendations to USRA by January 1, 1981. The report and recommendations of USRA and Conrail are to be submitted to Congress no later than April 1, 1981.

The Department of Transportation is to submit its recommendations by that same date, and there is a provision for comment by the Commission.

The Conference substitute adopts the Conrail emergency funding authorization of $329 million for fiscal year 1981. It retains the Senate provision for an affirmative finding by the Finance Committee that Conrail has taken appropriate action to eliminate losses on light density lines and other lines which are unprofitable. However, since the rail bill contains separate surcharge and abandonment provisions, the expedited Conrail surcharge and abandonment procedures have been deleted. The Conferees stress, however, that Congress intends, as a condition of the emergency funding, that Conrail proceed to eliminate or reduce its losses on unprofitable lines and implement such cost conservation measures as are feasible to minimize the needs for additional Federal funds.

Earlier this year, in the Passenger Railroad Rebuilding Act, Congress established the goal of eliminating congestion of rail freight and rail passenger traffic along the Northeast Corridor. At that time, Congress also authorized funds to begin the diversion of freight around Baltimore. It now appears that still more freight may be diverted off the corridor by cooperation between Conrail and the Delaware and Hudson Railroad and that no authorization of appropriations is required to divert additional traffic off the corridor by the negotiations of trackage rights between Conrail and the Delaware and Hudson. Accordingly, the Conferees express their hope that these negotiations will successfully divert additional freight off the corridor and direct the United States Railway Association to monitor these negotiations and to report on their progress to the respective committees.

SECTION 704—USRA AUTHORIZATION OF APPROPRIATIONS

Senate bill.—The Senate bill contained a 2 year authorization of $31.5 million in fiscal year 1981 and $25.5 million in 1982.

House amendment.—The House amendment contained a 1 year authorization for $28.5 million.

Conference substitute.—The conference substitute provides a 1 year authorization of $30 million for fiscal year 1981.

SECTION 705—FEEDER LINE REHABILITATION STUDY

Senate bill.—No provision.

House bill.—Section 231 of the House bill created a Rail Technology and Shippers Needs Board. This Board is to consist of the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Labor, the Chairman of the Interstate Commerce Commission, and two shipper representatives from national agricultural organizations appointed by the President. The Board is given authority to conduct studies of technological means to improve rail productivity and the continuing transportation needs of urban and rural shippers.

Section 231 of the House bill also provides for a study of the revenue impact and public benefits of exempting from taxation State or local government obligations incurred in connection with the rehabilitation of railroad feeder lines. The report must include criteria as may be necessary to prevent the abuse of the special tax status given under this section.

Conference substitute.—The Conference Substitute deleted the Rail Technology and Shippers Needs Board but retained the study of the impact of exempting State or local government obligations incurred in connection with the railroad feeder lines. It is anticipated that this report will include recommendations regarding the

types of railroad properties and services which ought to be eligible for State or local government obligations which are exempt from taxation; ways to narrow the applicability of this special issue to ensure that such obligations will be issued only for productive rail rehabilitation or acquisition projects; and ways to ensure coordination with Federal, State and local rail programs.

SECTION 706—EFFECT ON PENDING MATTERS

Senate bill.—No provision.

House amendment.—The House bill contains a provision which states that all applications or proceedings pending before the Commission or other agencies, or any court, shall be determined as if this law had not been enacted.

Conference substitute.—The conference substitute deletes the House provision, but clarifies that existing rate bureau proceedings shall be conducted under the law prior to the enactment of this Act. The House bill, as passed, contains a section determining the effect of this legislation on pending matters. The fact that the Conference substitute does not contain a similar provision is not intended to create any implication that other cases now pending at the Commission, other affected agencies, or pending in the Federal courts are not to be adjudicated or determined under existing law or the new legislation in accordance with controlling case law. The deletion of these provisions means that existing cases at the Commission, other affected agencies, or pending in the Federal courts, shall be determined as present case law requires that they be determined.

If a case is pending in Federal Court or has been remanded to the Commission, the Conferees intend that the rate ultimately determined by the Commission shall be considered the rate in effect on the date of enactment for the purposes of this Act.

SECTION 707—CONSTRUCTION OF AMENDMENTS

Senate bill.—Same as the House bill.

House amendment.—The House amendment provided that the amendments made by this Act should not be construed to modify the existing law with respect to competition and coordination as it affected the relationship between water carriers and rail carriers.

Conference substitute.—The provision contained in this section, which qualifies each provision of each section of this Act, is designed to make clear that none of the provisions of the Act modifies existing law to make lawful a rate or practice that was unlawful on the day prior to enactment. Also the Conferees intend that this section allow water carriers to challenge practices that were unlawful as unfair, destructive, predatory, or otherwise undermined competition prior to enactment of this Act. In addition, of course, the Conferees do not intend to limit the rights of water carriers to exercise their rights and remedies under the provision of the Interstate Commerce Act as amended by the Staggers Act of 1980 regardless of whether those rights and remedies are related to practices which are unfair, destructive, predatory or otherwise undermine competition.

The intent is that none of the amendments made by this Act is to be used to legitimize the undermining of rail-water competition. Railroad rates and practices that affect rail-water competition that are unfair, destructive, predatory, or otherwise undermine competition, and that were unlawful immediately prior to enactment of this Act shall continue to be prohibited. Similarly, no change made by this Act makes lawful any other railroad rate or competitive practice that is unfair, destructive, predatory or otherwise undermines competition.

SECTION 708—SURPLUS EQUIPMENT

Senate bill.—No provision.

House amendment.—The House amendment makes Conrail eligible to borrow excess equipment from the Department of the Army. Now, the effected community must pay a rental fee of the fair market value, which is too high for most local communities. The amendment would set up a two-step process for obtaining the needed equipment (bridge for example). The first would be an application by Conrail to the Army for a contract to borrow the bridge; this would occur only after Conrail has determined that public safety required such action. After Conrail and the Army have concluded negotiations, Conrail would enter into a contract with the local community to pay for the transportation of the bridge to the site and for routine maintenance.

While the language of the amendment is general, it is specifically aimed at solving a problem in the city of Niles, Ohio, where the West Park Avenue Bridge going over Conrail tracks was damaged and traffic is now being rerouted through a public park. This creates a hazardous and dangerous condition for the many children in the area.

Conference substitute.—Conference substitute adopts the House provision.

SECTION 709—STUDY OF ALASKA RAILROAD RATES

Senate bill.—No provision.

House amendment.—The House amendment requires, within 6 months after the effective date of the legislation, the Commission to complete a study to determine whether certain rates charged by the Alaskan Railroad would, if such rates were entered into after the enactment of the legislation, have violated Section 10701a(c)(1) of Title 49 U.S.C. as amended by the House amendment.

Conference substitute.—The Conference substitute follows the House amendment. Allegations have been made that the Alaska Railroad has been engaged in predatory pricing to the injury of its privately-owned competitors. It has also been alleged that the Alaska Railroad has the capacity to engage in such activity because it is federally owned and subsidized, while its competitors are totally unsubsidized. Clearly, such conduct would be contrary to sound public policy.

Accordingly, an investigation by the Commission is ordered by this Act. It is expected that the Commission will conduct a careful, impartial analysis of the controversy, weighing all the facts and arguments of the interested parties, and making available its analy-

sis and supporting data for public comment prior to rendering a final report to Congress. The Department of Transportation and other Federal agencies are expected to cooperate fully with the Commission in the conduct of the investigation.

The Commission's study is to be coordinated with a study by the State of Alaska.

SECTION 710—EFFECTIVE DATES

Senate bill.—No provision.

House amendment.—The House amendment provides that the provisions of this Act and the amendments made by this Act shall take effect October 1, 1980, except certain sections dealing with the Conrail employee protection.

Conference substitute.—The Conference substitute adopts the House amendment, but clarifies that the amendments to the Rock Island Transition and Employee Assistance Act in section 227 are effective upon enactment.

APPENDIX A

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., September 16, 1980.

Hon. J. JAMES EXON,
U.S. Senate, Washington, D.C.

DEAR SENATOR EXON: This is in reply to your letter of September 11 asking for my interpretation of the Commission's authority regarding demand-sensitive rates if Section 210 of H.R. 7235 (The Rail Act of 1980) were enacted. As your letter points out, Section 210 repeals the existing section of the Interstate Commerce Act which requires the Commission to maintain standards and procedures to permit the establishment of demand-sensitive rates. In my view, repeal of this section will lead the Commission to repeal its existing regulations regarding demand-sensitive rates and to refuse to initiate new rulemakings on this subject.

I hope this addresses your concerns about the Commission's interpretation of existing and pending legislation. I would, of course, be pleased to discuss this with you at any time. If legislation is enacted, I look forward to working closely with you and other members of Congress who have devoted so much effort to bringing a rail bill to fruition.

Sincerely yours,

DARIUS W. GASKINS, Jr., *Chairman.*

APPENDIX B

CHICAGO AND NORTHWESTERN TRANSPORTATION CO.,
September 16, 1980

Hon. J. J. EXON,
U.S. Senate, Washington, D.C.

DEAR SENATOR EXON: We know you are concerned with our plans for the future of our east-west line between the Wyoming State line and the Mississippi River. Please be advised we have no intention of abandoning this line.

The construction of, and successful operation of, our proposed connector line to the Union Pacific near Joyce, Nebraska, not only will not endanger the east-west line, but will enhance its future. Revenues derived from the coal project will make this railroad stronger and better able to maintain this line, which performs a useful service for the citizens of Nebraska.

It is our purpose to maintain this line in condition to respond to service needed by your citizens. As we become stronger, we are better able to increase the quality of this line and our other lines in Nebraska. However, I would like to emphasize that we do have an ongoing program which has resulted in substantial investment. For the period from 1974 to 1979 we have invested $35,456,000 in maintenance and capital in this line. Obviously, it is our intention to continue maintenance and investment at this level or, hopefully, greater.

Sincerely,

JEROME CONLON, *Senior Vice President.*

HARLEY O. STAGGERS,
JAMES J. FLORIO,
JOHN M. MURPHY,
BON ECKHARDT,
JIM SANTINI,
BARBARA A. MIKULSKI,
ROBERT T. MATSUI,
JAMES T. BROYHILL,
EDWARD R. MADIGAN,
TOM LOEFFLER,
GARY A. LEE,
Managers on the Part of the House.

HOWARD W. CANNON,
RUSSELL B. LONG,
J. JAMES EXON,
BOB PACKWOOD,
NANCY LANDON KASSEBAUM,
Managers on the Part of the Senate.

STAGGERS RAIL ACT OF 1980

Public Law 96-448; 96th Congress

AN ACT To reform the economic regulation of railroads, and for other purposes.

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Staggers Rail Act of 1980".

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FINDINGS

SEC. 2. The Congress hereby finds that—

(1) historically, railroads were the essential factor in the national transportation system;

(2) the enactment of the Interstate Commerce Act was essential to prevent an abuse of monopoly power by railroads and to establish and maintain a national railroad network;

(3) today, most transportation within the United States is competitive;

(4) many of the Government regulations affecting railroads have become unnecessary and inefficient;

(5) nearly two-thirds of the Nation's intercity freight is transported by modes of transportation other than railroads;

(6) earnings by the railroad industry are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvements;

(7) by 1985, there will be a capital shortfall within the railroad industry of between $16,000,000,000 and $20,000,000,000;

(8) failure to achieve increased earnings within the railroad industry will result in either further deterioration of the rail system or the necessity for additional Federal subsidy; and

(9) modernization of economic regulation for the railroad industry with a greater reliance on the marketplace is essential in order to achieve maximum utilization of railroads to save energy and combat inflation.

GOALS

SEC. 3. The purpose of this Act is to provide for the restoration, maintenance, and improvement of the physical facilities and financial stability of the rail system of the United States. In order to achieve this purpose, it is hereby declared that the goals of this Act are—

(1) to assist the railroads of the Nation in rehabilitating the rail system in order to meet the demands of interstate commerce and the national defense;

(2) to reform Federal regulatory policy so as to preserve a safe, adequate, economical, efficient, and financially stable rail system;

(3) to assist the rail system to remain viable in the private sector of the economy;

(4) to provide a regulatory process that balances the needs of carriers, shippers, and the public; and

(5) to assist in the rehabilitation and financing of the rail system.

TITLE I—RAIL TRANSPORTATION POLICY

RAIL TRANSPORTATION POLICY

SEC. 101. (a) Chapter 101 of title 49, United States Code, is amended by inserting after section 10101 the following new 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.'.

(b) Section 10101(a) of title 49, United States Code, is amended by striking out "To ensure" and inserting in lieu thereof "Except where policy has an impact on rail carriers, in which case the principles of section 10101a of this title shall govern, to ensure".

(c) The section analysis of chapter 101 of title 49, United States Code, is amended by inserting after the item relating to section 10101 the following new item:

"10101a. Rail transportation policy.".

TITLE II--RAILROAD RATES AND INTER-CARRIER PRACTICES

REGULATION OF RAILROAD RATES

SEC. 201. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by inserting after section 10701 the following new section:

"§ 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 transportation 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 title 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.".

(b)(1) Section 10701(a) of title 49, United States Code, is amended—

(A) by inserting "(other than a rail rate)" immediately after "A rate" in the first sentence;

(B) by inserting "(including a rail carrier)" immediately after "such a carrier" in the second sentence thereof; and

(C) by inserting "(including rail carriers)" immediately after "those carriers" in the third sentence thereof.

(2) Section 10701(b) of title 49, United States Code, is repealed.

(3) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately below the item relating to section 10701 the following new item:

"10701a. Standards for rates for rail carriers.".

DETERMINATION OF MARKET DOMINANCE

SEC. 202. Section 10709 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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.".

ZONE OF RATE FLEXIBILITY

SEC. 203. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by inserting after section 10707 the following new section:

"§ 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 (2) 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 jurisdiction 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.".

(b) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10707 the following new item:

"10707a. Zone of rail carrier rate flexibility.".

(c)(1) Any rail carrier rate which increased over 70 percent between 1976 and 1979 inclusive for the transportation, in shipper owned equipment over a distance exceeding 1,550 miles between points within the United States, of coal pursuant to a tariff calling for an annual volume of more than 2,000,000 tons per year purchased by a municipally owned utility for the generation of electric power under a 20-year purchase agreement entered into by such utility in the year 1974 shall not be increased so long as coal is purchased under such original agreement, except that—

(A) during the period beginning October 1, 1980, and ending September 30, 1987, the Interstate Commerce Commission may permit increases in such rate which result in a revenue-variable cost percentage of not more than 162 percent; and

(B) after October 1, 1987, such rate shall be subject to section 10701a of title 49, United States Code, and related provisions of such title governing regulation of rail carrier rates, except that until such rate results in a revenue-variable cost percentage that is equal to or greater than the revenue-variable cost percentage applicable under section 10709(d) of such title, such rate may not be increased more than 4 percent, in addition to inflation, in any year.

(2) Neither the provisions of this subsection nor any rate subject to this subsection shall be admissible as evidence or considered in any way in any proceeding involving any other rail carrier rate that is commenced to determine market dominance under section 10709 of title 49, United States Code, or to determine reasonableness under section 10701a of such title.

TRANSPORTATION OF RECYCLABLE MATERIALS

SEC. 204. Section 10731 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of this title 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.".

RATE REGULATION PROCEEDINGS; ADEQUATE REVENUES

SEC. 205. (a)(1) The Interstate Commerce Commission shall commence a proceeding for purposes of determining whether, and to what extent, product competition should be considered in proceedings under subtitle IV of title 49, United States Code, to determine the reasonableness of rail carrier rates. The Commission shall complete its proceeding under this subsection within 230 days after the effective date of this Act.

(2)(A) For purposes of this subsection, the term "product competition" means the availability to a consignee, at a competitive delivered cost and in sufficient quantities, of products or commodities which are of the same type as the commodity or product to which the rate in question applies, without regard to whether such products or commodities are available from the same or a different origin as those to which the rate applies.

(B) In determining the availability of alternative sources of a particular commodity for purposes of this subsection, such commodity must be capable, by reason of similar specifications, of being effectively utilized by the consignee.

(C) In determining the availability of alternative sources of coal for purposes of this subsection, such coal must be capable, by reason of similar specifications such as Btu's, sulfur content, and ash content, of being effectively utilized by the consignee.

(D) For purposes of this subsection, any coal imported in the United States for the generation of electricity by utilities shall not be taken into account in the determination of whether coal is available to a consignee from another source.

(3)(A) Nothing in this subsection shall be construed as requiring the Commission to modify its standards for the determination of the reasonableness of rail carrier rates under existing law and procedures.

(B) Nothing in this subsection shall be construed as altering the meaning, use, or interpretation by the Commission, the courts, or any party of the term "market dominance", as defined in section 10709(a) of title 49, United States Code. The enactment of this subsection shall not be considered by the Commission in any proceeding, or by any court on an appeal from that or any other proceeding, to determine the proper scope of the term "market dominance" or whether there is market dominance over the transportation to which any particular rate applies.

(b)(1) Section 10704(a)(2) of title 49, United States Code, is amended by inserting "and revise as necessary" immediately after "shall maintain".

(2) Section 10704(a) of title 49, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(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.".

INFLATION-BASED RATE INCREASES

SEC. 206. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 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.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10711 the following new item:

"10712. Inflation-based rate increases.".

INVESTIGATION AND SUSPENSION OF RATES

SEC. 207. (a) Section 10707(b)(1) of title 49, United States Code, is amended to read as follows:

"(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.".

(b) Section 10707(c) of title 49, United States Code, is amended to read as follows:

"(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.".

(c) Section 10707(d) of title 49, United States Code, is amended to read as follows:

"(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 title, 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 title, the rail carrier may refund any part of the portion of the decrease found to comply with this title 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.".

(d) Section 10707(e) of title 49, United States Code, is repealed.

CONTRACTS

SEC. 208. (a) Subchapter I of chapter 107 of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new section:

"§ 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) 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.

"(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 purchasers 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 had 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 and 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.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10712, as added by this Act, the following new item:

"10713. Contracts.".

DEMAND SENSITIVE RATES

SEC. 209. Section 10727 of title 49, United States Code, and the item relating to such section in the section analysis for chapter 107 of such title, are repealed.

PHASEOUT OF CAPITAL INCENTIVE RATES

SEC. 210. (a) Section 10729 of title 49, United States Code, and the item relating to such section in the section analysis of chapter 107 of such title, are repealed.

(b) Notwithstanding any other provision of law, any rate established by a rail carrier under section 10729 of title 49, United States Code, prior to the effective date of this Act shall remain in effect in accordance with its terms, but for no longer than 5 years after the date it became effective, unless the parties otherwise agree. However, the Interstate Commerce Commission may, during the period such a rate is in effect, order such rate revised to a level equal to the incremental cost of providing the transportation if the Commission finds that the level then in effect reduces the going concern value of the rail carrier.

PERMISSIVE LIMITED LIABILITY RATES

SEC. 211. (a) Section 10730(a) of title 49, United States Code, is amended by inserting "and excluding any rail carrier" immediately after "motor common carrier of property".

(b) Section 10730 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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.".

(c) Section 11707(d) of title 49, United States Code, is amended—

(1) by inserting "(1)" immediately after "(d)";

(2) by inserting "(other than a rail carrier)" immediately after "delivering carrier"; and

(3) by adding at the end thereof the following new paragraph:

"(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.".

(d) Within one year after the effective date of this Act, the Attorney General and the Interstate Commerce Commission shall independently investigate whether rail carriers should continue to be subject to section 11707 of title 49, United States Code, and submit a report to the Congress setting forth recommendations to Congress for appropriate legislative action. Each such investigation shall address the following issues:

(1) Whether, in the case of traffic with respect to which rail carriers do not have market dominance, such carriers should be subject to any higher level of liability for loss and damage than they are willing to agree to with the shippers of such traffic.

(2) Whether, in the case of traffic with respect to which rail carriers have market dominance, such carriers should be subject to any greater liability than would be imposed under a statutory comparative negligence standard.

(3) Whether liability for damage to rail traffic should be determined under a no-fault liability system and what shippers should bear the cost of such a system.

(4) Whether venue in cases arising from rail carrier liability for damages to traffic should be further limited.

(5) Whether rail carrier property damage cases should be subject to laws other than Federal law.

(6) Whether the right to claims should be limited to either the shipper or receiver of property.

(7) Whether maximum time limits should be imposed on the filing of claims with rail carriers and the courts.

(8) Whether the prevailing party in a claims proceeding should be awarded attorneys fees in order to limit needless litigation.

(9) Whether excessive attorneys fees are awarded in cases under section 11707 of title 49, United States Code.

(10) Whether claimants should be able to recover damages in excess of the market value of the commodity transported unless liability for special or consequential damages is agreed to by the carrier in unity.

RATE DISCRIMINATION

SEC. 212. Section 10741 of title 49, United States Code, is amended by striking out subsection (e) and inserting in lieu thereof the following new subsections:

"(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.".

EXEMPTION

SEC. 213. Section 10505 of title 49, United States Code, is amended to read as follows:

"§ 10505. Authority to exempt rail carrier transportation

"(a) In a matter related to a rail carrier providing transportation 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 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 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 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, or (2) to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle.".

INTRASTATE RATES

SEC. 214. (a) Section 11501(a) of title 49, United States Code, is amended—

(1) by striking out paragraph (2);

(2) by striking out "(a)(1)" and inserting in lieu thereof "(a)";

(3) by striking out "subchapter I or IV" and inserting in lieu thereof "subchapter IV"; and

(4) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

(b) Section 11501 of title 49, United States Code, is amended by redesignating subsections (b) and (c) as subsections (d) and (e), respectively, and by inserting immediately after subsection (a) the following new subsections:

"(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 title. 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 jurisdiction 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 certifica-

tion. 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.".

(c)(1) Section 11501(d)(2) of title 49, United States Code, as redesignated by subsection (b) of this section, is amended by inserting "and chapter 107 of this title" immediately before the period at the end of the first sentence.

(2) Section 10103(a) of title 49, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided in this subtitle, the".

(3) Section 10501(a)(2) of title 49, United States Code, is amended by inserting "such jurisdiction is not limited by subsection (b) of this section or the extent" immediately after "to the extent".

(4) Section 10501(c) of title 49, United States Code, is amended by inserting "(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)" immediately after "unless".

(5) Section 10501 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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 title pursuant to this section and section 11501(b) of this title) over transportation by rail carriers, and the remedies provided in this title with respect to the rates, classifications, rules, and practices of such carriers, is exclusive.".

BUSINESS ENTERTAINMENT EXPENSES

SEC. 215. Section 10751 of title 49, United States Code, is amended by striking out "(other than transportation by rail)" in subsections (a) and (b).

(b) The provisions of section 10751 of title 49, United States Code, as amended by subsection (a) of this section, shall apply to any expense of the type described in subsection (a) of such section 10751 that was incurred prior to the effective date of this Act (other than an expense with respect to which a penalty was paid pursuant to section 10761 of such title 49) or that is incurred on or after such effective date.

EFFICIENT MARKETING

SEC. 216. (a) Section 10762(c)(3) of title 49, United States Code, is amended by striking out the second sentence and inserting in lieu thereof the following: "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, 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.".

(b) Section 10762(d)(1) of title 49, United States Code, is amended by striking out "30-day" and inserting in lieu thereof "notice".

COMPENSATORY JOINT RATE RELIEF

SEC. 217. (a)(1) Chapter 107 of title 49, United States Code, is amended by inserting after section 10705 the following new section:

"§ 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 movement 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 carrier's 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 costs 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 subparagraph (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 for operating the line, the Commission shall determine the level of surcharge which would produce revenues equal to such figure and shall authorize such carrier 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 competitive 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 another 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 surcharging 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 viola-

tion of any provision of this title, 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 rate 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 variable 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 carrier 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.".

(2) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10705 the following new item:

"10705a. Joint rate surcharges and cancellations.".

(b) For purposes of section 10705a of title 49, United States Code, the Interstate Commerce Commission shall classify all rail carriers on the basis of revenues, shall from time to time review its regulations setting forth revenue-based classifications for rail carriers, and shall make appropriate changes in such regulations in order to reflect inflation. The Commission shall not reclassify switching and terminal carriers, or any other rail carriers not classified on the basis of revenues on the effective date of this Act, for any purpose other than for purposes of such section 10705a.

(c)(1) The Interstate Commerce Commission shall include in its annual report to the Congress under section 10311 of title 49, United States Code, a report with respect to the application of surcharges and the cancellation of the application of joint rates by the Consolidated Rail Corporation and other rail carriers, during the preceding year, under section 10705a of title 49, United States Code. Each such report shall include—

(A) an analysis of the effect of application of surcharges and the cancellation of the application of joint rates under such section 10705a on shippers, ports, class II and class III rail carriers, railroad employees, and other elements of the rail system;

(B)(i) the number of surcharges applied by the Consolidated Rail Corporation and all other rail carriers under such section 10705a and the amount of revenue received by the Corporation and all other rail carriers from the application of such surcharges, (ii) the number of surcharges applied by the Corporation and all other rail carriers that were canceled under the procedures of such section 10705a, and (iii) the number of cancellations of the application of a joint rate by the Corporation and all other rail carriers under such section 10705a; and

(C) an analysis of the operation of the remedies made available to class III rail carriers under subsections (i), (j), and (k) of such section 10705a and to class II and class III rail carriers under subsection (l) of such section 10705a.

(2) The Interstate Commerce Commission shall, within 2 years after the effective date of this Act, submit a report to the Congress with respect to whether the provisions of section 10705a of title 49, United States Code, have adequately addressed the joint rate problems of rail carriers. The report shall include such recommendations with respect to such joint rate problems as the Commission considers necessary and appropriate.

EXPEDITED DIVISION OF REVENUES PROCEEDINGS

SEC. 218. (a) Section 10705(f)(1) of title 49, United States Code, is amended to read as follows:

"(f)(1)(A) 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—

"(i) 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

"(ii) in all cases other than those specified in clause (i) 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.

"(B) The provisions of this paragraph imposing time limitations upon Commission action shall not apply to any division proceeding involving a joint rate participated in by a class III rail carrier.".

(b) Section 10705(f)(1) of title 49, United States Code, as amended by subsection (a) of this section, is further amended—

(1) by striking out subparagraph (B);

(2) by striking out "(A)" immediately before "The Commission";

(3) by striking out "(i)" and inserting in lieu thereof "(A)";

(4) by striking out "(ii)" and inserting in lieu thereof "(B)"; and

(5) by striking out "clause (i) of this subparagraph" and inserting in lieu thereof "subparagraph (A) of this paragraph".

RATE BUREAUS

SEC. 219. (a) Section 10706(a)(1) of title 49, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(C) 'practicably participates in that movement' shall have such meaning as the Commission shall by regulation prescribe.".

(b) Section 10706(a)(2)(A) of title 49, United States Code, is amended—

(1) by inserting "publication," immediately after "initiation," in the first sentence; and

(2) by striking out "section 10101" in the second sentence and inserting in lieu thereof "section 10101a".

(c)(1) Section 10706(a)(3)(A) of title 49, United States Code, is amended to read as follows:

"(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.".

(2) Section 10706(a)(3)(B) of title 49, United States Code, is amended to read as follows:

"(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.".

(3) Section 10706(a)(3)(C) of title 49, United States Code, is amended—

(A) by inserting "(i)" immediately after "(C)"; and

(B) by adding at the end thereof the following new clause:

"(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.".

(4) Section 10706(a)(3) of title 49, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(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.".

(d) Section 10706(a) of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(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.".

(e) Section 10706(i)(1)(B) of title 49, United States Code, is amended by striking out "section 10101" and inserting in lieu thereof "section 10101a".

(f) The Interstate Commerce Commission may not take any action with respect to the elimination of general rate increases or decreases prior to April 1, 1982.

(g) The Interstate Commerce Commission shall require rail carrier members of a rate bureau to provide the employees of such rate bureau who are affected by the amendments made by this section with fair arrangements no less protective of the interests of such employees than those established pursuant to section 11347 of title 49, United States Code. For purposes of this subsection, the term "employees" does not include any individual serving as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions.

LONG AND SHORT HAUL TRANSPORTATION

SEC. 220. Section 10726(c) of title 49, United States Code, is repealed.

RAILROAD ENTRY

SEC. 221. (a) Section 10901(a) of title 49, United States Code, is amended by striking "will be enhanced by" and inserting in lieu thereof "permit".

(b) Section 10901 of title 49, United States Code, is further amended by adding at the end thereof the following new subsections:

"(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.".

SERVICE DURING PERIODS OF PEAK DEMAND

SEC. 222. Section 11101(a) of title 49, United States Code, is amended by adding at the end thereof the following new sentence: "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.".

RECIPROCAL SWITCHING

SEC. 223. Section 11103 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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.".

CAR SERVICE COMPENSATION

SEC. 224. (a)(1) Section 11122(b)(2) of title 49, United States Code, is repealed.

(2) Section 11122(b)(1) of title 49, United States Code, is amended by striking out "(1)" immediately before "The rate".

(b) Section 10706(a) of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(5)(A) Whenever two or more shippers enter into an agreement to discuss among themselves the agreement 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.".

CAR UTILIZATION

SEC. 225. (a) Subchapter II of chapter 107 of title 49, United States Code, is amended by inserting at the end thereof the following new section:

"§ 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.".

(b) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10731 the following new item:

"10734. Car utilization.".

CAR SERVICE ORDERS FOR EXIGENT CIRCUMSTANCES

SEC. 226. Section 11123(a) of title 49, United States Code, is amended to read as follows:

"(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.".

EMPLOYEE PROTECTION

SEC. 227. (a) Section 1170 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(e)(1) In authorizing any abandonment of a railroad line under this section, the court 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.".

(b) Section 1172 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) In approving an application under subsection (b) of this section, the Commission 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.".

MERGERS AND OTHER TRANSACTIONS

SEC. 228. (a) Section 11344(b) of title 49, United States Code, is amended—

(1) by inserting immediately after "section" the following: "which involves the merger or control of at least two class I railroads, as defined by the Commission"; and

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

"(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.".

(b) Section 11344 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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 5 (a)-(d) of the Department of Transportation Act (49 U.S.C. 1654 (a)-(d)), accord substantial weight to any recommendations of the Secretary of Transportation.".

(c) Section 11344 of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new subsection:

"(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 Commission 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.".

(d) Section 11345 of title 49, United States Code, is amended to read as follows:

"§ 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 importance. The decision of the Commission under this subsection is a final action under section 10327 of this title.".

(e) Any application filed or pending on the effective date of this Act under section 11343, 11344, or 11345 of title 49, United States Code, before the Secretary of Transportation, the Interstate Commerce Commission, or any court shall be adjudicated or determined as if this Act had not been enacted.

SAVINGS PROVISIONS

SEC. 229. (a) Any rate that is in effect on the effective date of this Act for transportation by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, may, during the 180-day period beginning on such effective date, be challenged in a complaint filed with the Interstate Commerce Commission by any interested party alleging that the rail carrier has market dominance over the transportation to which the rate applies, as determined under section 10709 of such title, and that the rate is not reasonable under section 10701a of such title.

(b) Any rate described in subsection (a) of this section—

(1) which is not challenged in a complaint filed within the 180-day period provided in such subsection; or

(2) which is challenged in such a complaint, but (A) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or (B) the rate is found to be reasonable,

shall be deemed to be lawful and may not thereafter be challenged in the Commission or in any court (other than on appeal from a decision of the Commission).

(c) The provisions of this section shall not apply to any rate under which the volume of traffic moved during the 12-month period immediately preceding the effective date of this Act did not exceed 500 net tons and has increased tenfold within the 3-year period immediately preceding the bringing of a challenge to the reasonableness of such rate.

(d) The burden of proof in any proceeding under this section shall be on the complainant.

TITLE III—RAILROAD COST DETERMINATIONS

UNIFORM ACCOUNTING SYSTEM

SEC. 301. Section 11142 of title 49, United States Code, is amended to read as follows:

"§ 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.".

RAILROAD COST ACCOUNTING

SEC. 302. (a) Chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following new subchapter:

"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, accounting, 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 1/200 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 determination of all railroad costs for specific regulatory proceedings under this title.

"(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 title 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 systems

"(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 certification 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 pursuant to this title, 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 title, 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.".

(b) The analysis of chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following:

"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.".

CIVIL PENALTIES FOR VIOLATIONS OF ACCOUNTING PRINCIPLES PROVISIONS

SEC. 303. (a)(1) Chapter 119 of title 49, United States Code, is amended by inserting immediately after section 11913 the following new section:

"§ 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.".

(2) The section analysis of chapter 119 of title 49, United States Code, is amended by inserting immediately after the item relating to section 11913 the following new item:

"11913a. Accounting principles violations.".

(b) Section 11910 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(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.".

TITLE IV—RAILROAD MODERNIZATION ASSISTANCE

FEEDER RAILROAD DEVELOPMENT PROGRAM

SEC. 401. (a) Subchapter I of chapter 109 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 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 government authority but does not include a class I or a 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 has been placed 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; 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 concurrently notify the parties of such finding and publish such finding in the Federal Register.

"(d) In the case of any railroad line subject to sale under subsection (a) of this section, the 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 p[illegible] 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 title, 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 [illegible] this section proposes to sell or abandon all or any portion o[illegible]rchased 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 provisions of this section.".

(b) The section analysis of chapter 109 of title 49, United States Code, is amended by adding immediately after the item relating to section 10909 the following new item:

"10910. Railroad development.".

ABANDONMENT

SEC. 402. (a)(1) Section 10903(b)(1) of title 49, United States Code, is amended by striking out the first sentence.

(2) Section 10903(c) of title 49, United States Code, is repealed.

(b)(1) Section 10904(a) of title 49, United States Code, is amended—

(A) by striking out "at least 60" and all that follows through "effective" in paragraph (1);

(B) by striking out "and" at the end of paragraph (2)(A);

(C) by striking out the period at the end of paragraph (2)(B) and inserting in lieu thereof "; and";

(D) by adding at the end of paragraph (2) the following new subparagraph:

"(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 subsid[illegible]ms for the carrier."; and

(E) by inserting immediately before the period at the end of paragraph (3)(E) the following: ", and certifying that clauses (A)-(D) have been satisfied within the most recent 30 days prior to the date the application is filed".

(2) Section 10904(b) of title 49, United States Code, is amended to read as follows:

"(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.".

(3) Section 10904(c) of title 49, United States Code, is amended to read as follows:

"(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 deci-

sion, 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.".

(4) Section 10904 of title 49, United States Code, is amended by redesignating subsection (d) as subsection (e), and by inserting immediately after subsection (c) the following new subsection:

"(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 5(a)-(d) of the Department of Transportation Act (49 U.S.C. 1654(a)-(d)), the Commission shall consider whether any detriment from the abandonment or discontinuance exceeds the transportation benefit from the plan or proposal as a whole.".

(5) Section 10904(e) of title 49, United States Code, as redesignated by paragraph (4) of this subsection, is amended by inserting immediately before the period at the end thereof the following: ", 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 5(a)-(d) of the Department of Transportation Act (49 U.S.C. 1654(a)-(d)), or the application is filed by a railroad in bankruptcy".

(c) Section 10905 of title 49, United States Code, is amended to read as follows:

"§ 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 government 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 government 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.".

CONVERSION OF ABANDONED RAILROAD RIGHTS-OF-WAY

SEC. 403. Section 809(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended—

(1) by inserting "(1)" immediately before the first sentence thereof; and

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

"(2) There are authorized to be appropriated, for the purposes of carrying out the provisions of subsection (b)(2) of this section, not to exceed an aggregate amount of $10,000,000 for the fiscal years 1981, 1982, and 1983. Such sums are authorized to remain available until expended. Notwithstanding the provisions of subsection (b)(2) of this section, the Federal share for each grant made from the funds authorized to be appropriated pursuant to this paragraph may not exceed 80 percent of the total cost of any project.".

EXTENSION OF REDEEMABLE PREFERENCE SHARE FINANCING

SEC. 404. Sections 505(e), 507(a), 507(d), and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(e), 827(a), 827(d), and 829) are each amended by striking out "September 30, 1980" wherever it appears and inserting in lieu thereof "September 30, 1982" in each such place.

FINANCING

SEC. 405. (a)(1) Section 505(d)(3) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(d)(3)) is amended by striking out "$700,000,000" and inserting in lieu thereof "$1,400,000,000".

(2) Sections 507(a) and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 827(a) and 829) are each amended by striking out "$600,000,000" and inserting in lieu thereof "$1,400,000,000".

(b)(1) Section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is amended by inserting "(a)" immediately after "SEC. 509." and by adding at the end thereof the following new subsection:

"(b)(1) Not more than $200,000,000 of the funds received by the Secretary of Transportation from amounts appropriated under subsection (a) of this section shall be transferred by the Secretary to the United States Railway Association for use by the Association in accordance with section 216(b)(3) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)(3)). Such funds shall be transferred immediately upon the finding by the Finance Committee under such section 216(b)(3).

"(2) Not less 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 purchase 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.

"(3) Of the funds authorized to be appropriated under this section (other than funds described in paragraphs (1) and (2) of this subsection) not more than $180,000,000 are authorized to be appropriated in fiscal year 1981.".

(2) Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) Amounts transferred to the Association pursuant to section 509(b)(1) of the Railroad Revitalization and Regulatory Reform Act of 1976 may be used to purchase series A preferred stock of the Corporation to provide for the implementation by the Corporation of a program to reduce the Corporation's work force, if the Finance Committee finds that the implementation of such program will result in substantial savings to the United States.

"(B) An employee who ceases to be an employee as a result of the reduction of work force under a program implemented pursuant to this paragraph shall not, by reason of so ceasing to be an employee, or by reason of any work or employment entered into after so ceasing to be an employee, lose such employee's current connection with the railroad industry for the purposes of the Railroad Retirement Act of 1974.".

(c)(1) Section 505(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 725(a)) is amended—

(A) by inserting "(1)" immediately before "Any railroad"; and

(B) by adding at the end thereof the following new paragraphs:

"(2) An employee or employee-shipper group may apply to the Secretary for financial assistance pursuant to subsection (b)(3) of this section.

"(3) A financially responsible person (as defined in section 10910(a)(1) of title 49, United States Code) may apply to the Secretary for financial assistance from funds made available pursuant to section 509(b)(2) of this title.".

(2) Section 505(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(b)) is amended by adding at the end thereof the following new paragraph:

"(3) The Secretary may approve applications to provide financial assistance to any employee or employee-shipper ownership group formed pursuant to a plan for the purchase or rehabilitation of a line or lines of railroad or of rail facilities which are considered to be in the public interest. The Secretary shall not use more than 20 percent of the total funds available under this section for such financial assistance. In considering the allocation of available funds and priority of eligible projects under this subsection, the Secretary shall consider the availability of viable alternatives to the ownership or rehabilitation by the eligible employee-shipper group for the continuation of rail service. Projects with no such alternative shall receive highest priority.".

(3) Sections 506 through 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 826 through 829) are amended by—

(A) inserting "employee or employer-shipper group" immediately after "railroad" wherever it appears;

(B) inserting "employee or employee-shipper groups" immediately after "railroads" wherever it appears; and

(C) inserting "employee or employee-shipper group's" immediately after "railroad's" wherever it appears.

(4) Section 505(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(d)) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) In the case of a Government authority that applies for financial assistance from funds made available pursuant to section 509(b)(2) for the purchase or rehabilitation of railroad lines purchased under section 10910 of title 49, United States Code, financing pursuant to this section shall be in the form of purchase by the Secretary of bonds or other debt obligations issued for such purpose by such Government authority.".

(5) Paragraph (4) of section 505(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 725(d)), as redesignated by this subsection, is amended by inserting ", bonds, and other debt obligations" immediately after "trustee certificates".

(d) Section 501 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821), as amended, is further amended by—

(1) striking out "and" at the end of paragraph (7);

(2) inserting "acquisition or sale of assets or securities," immediately after "merger," in paragraph (8);

(3) striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon; and

(4) adding at the end thereof the following new paragraphs:

"(9) 'consolidation' means the combination of separate rail facilities and the abandonment of the excess facilities, except that such term does not include the combination by a single railroad of multiple tracks into fewer tracks where the tracks do not constitute separate physical and operating lines of railroad; and

"(10) 'coordination' means the combination of rail freight traffic flows through the use of joint facilities arrangements or internally that result in a reduction of service on at least one facility and includes arrangements for joint use of tracks or other facilities and the acquisition or sale of assets.".

(e) The first sentence of section 511(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(a)) is amended by inserting immediately after "equipment" the following: "(which includes but is not limited to computerized car management systems)".

TRANSACTION ASSISTANCE

SEC. 406. Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended by adding at the end thereof the following new paragraphs:

"(5) Financial assistance made available under paragraph (1)(B) of this subsection may be used to purchase, for purposes of rail banking, properties of the Milwaukee Railroad located in the State of Montana with respect to which an interest in future rail common carrier operations has been evidenced.

"(6) Applications for rail banking shall be treated equally with other applications for transaction assistance."

ELECTRIFICATION LOAN GUARANTEES

SEC. 407. Section 211(i) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(i)) is amended—

(1) by inserting "or any other railroad" immediately after "the Corporation" the first place it appears;

(2) by inserting "or such railroad" immediately after "the Corporation" the second and third places it appears; and

(3) by inserting immediately after the first sentence the following new sentences: "Upon application by the Corporation or by any railroad in reorganization in the region which receives a loan under section 211(a) of this Act, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 511 through 513 of such Act, guarantee obligations of the Corporation or such railroad for purposes of making capital improvements to coal export facilities.".

AMENDMENT TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 408. (a) The second sentence of section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by inserting "is not required to make the findings with respect to subsections (e)(3) and (f) and" immediately after "the Association" the first place it appears.

(b) Section 211(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)(2)) is amended by striking out "$4,000,000" and inserting in lieu thereof "$7,500,000".

(c) The last sentence of section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by striking out "1980" and inserting in lieu thereof "1981".

FEDERAL ASSISTANCE REPORT

SEC. 409. Within 90 days after the end of each fiscal year, the Secretary of Transportation shall submit a report to the Congress listing the specific Federal assistance provided the railroad industry during such fiscal year. Each such report shall set forth the reasons for each Federal loan or grant and explain the way in which such loan or grant contributed to the overall goal of providing a safe and efficient transportation system.

TITLE V—CONRAIL TITLE V LABOR PROTECTION

MONTHLY DISPLACEMENT ALLOWANCE

SEC. 501. Section 505(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(b)) is amended to read as follows:

"(b) MONTHLY DISPLACEMENT ALLOWANCE.—A protected employee shall be paid a monthly displacement allowance for any calendar month within the period identified in subsection (c) of this section in which the employee is deprived of employment or adversely affected with respect to such employee's compensation, in accordance with the following provisions:

"(1)(A) Effective on the effective date of the Staggers Rail Act of 1980, the protected rate of pay of a protected nonoperating employee (other than a maintenance-of-way employee) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be based on the rate of pay of the position held by the employee on September 1, 1979, or if the employee held no position on that date, the rate of pay of the last position held by the employee prior to that date. A guaranteed hourly rate of pay will be computed for each protected employee, based on the rate described in the preceding sentence, and will be (i) the actual hourly rate for hourly rated employees, (ii) the daily rate divided by 8 for daily rated employees, and (iii) the monthly rate divided by the working days in the claim month, further divided by 8, in the case of monthly rated employees. For employees occupying relief positions, the guarantee shall be computed on the basis of the weighted average daily rate of the positions relieved. Extra list employees will be guaranteed the extra list rate.

"(B) In the event a protected employee's position is abolished or such employee is displaced and is thereby required to occupy a position paying an hourly rate that is less than such employee's guaranteed hourly rate, the protected employee shall be paid the difference between the hourly rate of pay of the position such employee is occupying and his guaranteed hourly rate for all hours included in the straight time work schedule of such employee's position for the month of claim, less any time lost on account of voluntary absences other than vacations. Hours worked in excess of the straight time work schedule shall be paid in addition to the guarantee at the rate applicable to the position occupied, as provided for in the applicable collective bargaining agreement.

"(C) For any month or portion thereof in which a protected employee is deprived of employment, the protected employee shall be paid such employee's guaranteed hourly rate for the number of hours such employee would have worked in the straight time work schedule of such employee's previously held position.

"(D) Notwithstanding the provision that the protected rate shall be the rate of the position held on or immediately preceding September 1, 1979, if a protected employee becomes the permanent incumbent of a higher rated position and is not disqualified therefrom, the higher rate shall become such employee's protected rate.

"(2) Notwithstanding paragraph (1) of this subsection, effective on the effective date of the Staggers Rail Act of 1980, a protected maintenance-of-way employee shall be afforded his average monthly compensation, which is defined as the total compensation received by such employee during the 12 months

immediately preceding January 1, 1975, divided by his total time paid for during that period and multiplied by 174 or by his average monthly time paid for, whichever is less, and adjusted to reflect subsequent general wage increases. If a protected employee is deprived of employment or if the employee's straight-time compensation in his current position is less in any month than the employee's average monthly compensation, the employee shall be paid the difference between his straight-time earnings, if any, and 80 percent of the average monthly compensation, less any time lost on account of voluntary absences other than vacations. If, at the close of the calendar year, the sum of the protected employee's annual straight-time compensation, monthly displacement allowance payments and offsets applicable pursuant to this title is less than the employee's average monthly compensation multiplied by 12, the employee shall receive an additional payment representing the difference. If in the previous calendar year an employee has received displacement allowance payments in excess of his annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by section 505(g) of this title.

"(3) Effective on the effective date of the Staggers Rail Act of 1980 a protected operating employee (as defined in Interstate Commerce Commission classifications 107 through 128) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be afforded his average monthly compensation computed in accordance with this subsection as in effect prior to such effective date, but subject to a maximum amount equal to one-twelfth of the average annual earnings of all employees in the Interstate Commerce Commission classification, computed by cumulating the employee earnings reported to the Commission by the Corporation on a monthly basis for calendar year 1977 for the Interstate Commerce Commission classification of operating service in which such employee performed the preponderance of such employee's work in calendar year 1974, increased by applicable general wage increases. If the employee performed no operating service in 1974, the Interstate Commerce Commission classification shall be determined by the preponderance of such employee's operating service in an immediately preceding calendar year. If the average monthly compensation of a protected operating employee exceeds the maximum amount described in the first sentence of this paragraph, the average monthly compensation of the employee will be reduced to such maximum amount for purposes of computing such employee's monthly displacement allowance, if any. If the average monthly compensation of a protected operating employee is less than such maximum amount, the average monthly compensation of the employee will be used to compute such employee's monthly displacement allowance, if any. If a protected employee is deprived of employment, or if the employee is adversely affected with respect to his compensation such that the compensation in such employee's current position is less in any month than the average monthly compensation of the employee or such maximum amount, whichever is less, the employee shall be paid 75 per centum of the difference between such employee's earnings, if any, and the lesser figure, minus any time lost on account of voluntary absences other than vacations. If at the close of the calendar year the sum of the protected employee's annual earnings, monthly displacement allowance payments, and offsets applicable pursuant to this title is less than such employee's average monthly compensation subject to the maximum amount and multiplied by 12, the employee shall receive an additional payment representing the difference. In the computation of the annual payment, if during the calendar year an employee has been force assigned to, or has been required to exercise seniority to, a position in an Interstate Commerce Commission classification with a lesser maximum amount than the maximum amount applicable to such employee's 1974 Interstate Commerce Commission classification, such employee shall be paid the difference without credit being taken for compensation earned by virtue of actual working hours in the calendar year in excess of the number of hours paid for in such employee's average monthly compensation multiplied by 12 or such employee's annual 1977 maximum amount, whichever is less. An employee's compensation for purposes of this subsection shall not include savings sharing productivity payments received pursuant to paragraph (t) of the Crew Consist Agreement between the Corporation and the United Transportation Union dated September 8, 1978. If, in the previous calendar year, an employee has received displacement allowance payments in excess of such employee's annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by subsection (g) of this section.

"(d) Effective on the effective date of the Staggers Rail Act of 1980, a protected noncontract employee who has been deprived of employment or adversely affected with respect to such employee's compensation shall retain his average monthly compensation and monthly displacement allowance computed in accordance with this subsection as in effect prior to such effective date. In the event such noncontract employee exercises or has exercised seniority in a craft or class of operating employees, such employee's entitlement to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be the same as the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised. In the event such noncontract employee exercises or has exercised seniority in a craft or class of nonoperating employees, the entitlement of such employee to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be consistent with the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised, except that the protected rate of pay shall be based on the rate of pay of the position first obtained through the exercise of seniority, rather than the rate of any position held on or prior to September 1, 1979.

"(5) Notwithstanding the preceding provisions of this subsection, employees who, prior to September 1, 1979, accepted transfer to positions requiring a change of residence pursuant to subsection (d) of this section, shall retain their average monthly compensation and monthly displacement allowance computed in accordance with this subsection prior to the effective date of the Staggers Rail Act of 1980.

"(6) In determining compensation in a protected employee's current employment, such employee shall be treated as occupying the position producing the highest rate of pay to which such employee's qualifications and seniority entitle the employee under the applicable collective bargaining agreement and which does not require a change in residence. A protected operating employee will be considered to be occupying the position producing the highest rate of pay if the employee occupies a position producing compensation equal to such employee's average monthly compensation, subject to the maximum amount.

"(7) With respect to a protected employee who has been deprived of employment, the monthly displacement allowance shall be reduced by (A) the full amount of any unemployment compensation benefits received by such employee, and (B) an amount equivalent to any outside earnings of such employee.

"(8) A protected employee's average monthly compensation or protected rate of pay shall be adjusted from time to time thereafter to reflect subsequent general wage increases.

"(9) The average monthly compensation or protected rate of pay provided by this section shall in no event exceed $2,500 in any month, except that such amount shall be adjusted to reflect general wage increases subsequent to April 1, 1976.

"(10) A protected employee and his representative shall be furnished with such employee's protected rate of pay, or average monthly compensation and average monthly time paid for, subject to the maximum amount, computed in accordance with the terms of this subsection. Each protected employee who has been deprived of employment or his representative and the employer shall agree upon a procedure by which the employee shall keep the employer currently informed of the unemployment compensation benefits received by such employee and the earnings of such employee in employment other than with such employer.

"(11) In the case of a supplemental transaction—

"(A) with respect to an employee described in paragraph (1) of this subsection who was not employed on September 1, 1979, the protected rate of pay of such employee shall be based on the rate of pay of the position held by such employee on the first day of the first month after September 1979 in which such employee was employed;

"(B) with respect to an employee described in paragraph (2) of this subsection who was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed; and

"(C) with respect to an employee described in paragraph (3) of this subsection—

"(i) if such employee was employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of such 12-month period; and

"(ii) if such employee was not employed during the 12 months immediately preceding January 1, 1975, the preponderance of work of such employee shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed.".

DURATION OF MONTHLY DISPLACEMENT ALLOWANCE

SEC. 502. Section 505(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(c)) is amended to read as follows:

"(c) DURATION OF MONTHLY DISPLACEMENT ALLOWANCE.—The monthly displacement allowance provided for in subsection (b) of this section shall, in the case of a protected employee with 5 or more years of service on the effective date of this Act, continue until the attainment of age 65 by such employee, and shall, in the case of a protected employee who has less than 5 years of service on such date, continue for a period equal to the employee's total prior years of service, except that such monthly displacement allowance—

"(1) shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause;

"(2) shall not be paid with respect to any period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to retain or obtain a position available to the employee by the exercise of such employee's seniority rights in accordance with the provisions of this section;

"(3) shall not be paid to a protected employee deprived of employment with respect to any period of failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions (but the payment of monthly displacement allowances shall be resumed upon termination of the emergency); and

"(4) shall not be paid with respect to any month that commences after the effective date of the Staggers Rail Act of 1980 for which the employee has failed to make a claim for such allowance within 3 full calendar months (unless otherwise agreed upon by the employee or his representative and the employer) after the last day of the month for which such allowance is sought, except that such 3-month limit shall not apply to any claim which is the subject of or is based upon an arbitration decision issued pursuant to section 507 of this title.

therwise agreed upon by the employee or his representa- the employer, the entitlement of an employee to an allow- shall be approved or denied within 150 days after the claim therefor is made if such claim is filed during the 12-month period beginning on the effective date of the Staggers Rail Act of 1980, and within 90 days after the claim therefor is made if such claim is filed after such 12-month period. Any claim not approved or denied at the expiration of the time limits described in the preceding sentence shall be deemed approved.".

TRAINING AND TRANSFER

SEC. 503. (a)(1) Section 505(d) (1) and (3) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d) (1) and (3)) are each amended by inserting "or other employers with employees protected under this section" immediately after "Corporation" wherever it appears.

(2) Section 505(d)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d)(1)) is amended by inserting "or the system of other employers with employees protected under this section" immediately after "Corporation's system".

(3) Section 505(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d)(2)) is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of this subsection, a protected employee of the National Railroad Passenger Corporation shall not be required to transfer to a location outside the seniority district of such protected employee.".

(b) Section 505(d)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d)(4)) is amended by striking out "Transfers" and inserting in lieu thereof "Except as provided in paragraph (5) of this subsection, transfers".

(c) Section 505(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(d)(4)), as amended, is further amended by adding at the end thereof the following new paragraph:

"(5) In the case of a marine craft or class on the Corporation's system, or in the craft or class of a Penn Truck Lines, Incorporated, employee, transfers to vacancies requiring a change in residence shall be subject to the following:

"(A) The vacancy shall be first offered to the junior qualified protected employee or employees deprived of employment in the seniority district where the vacancy exists, and each such employee shall have 20 days to elect one of the options set forth in paragraph (1) of this subsection. The Corporation shall determine the number of junior qualified protected employees deprived of employment (not to exceed four employees per offer) who will be included in the offer of transfer. The vacancy will be awarded to the most junior qualified protected employee who accepts transfer. Other qualified protected employees who have accepted the transfer will retain their status as employees deprived of employment. Employees junior to the acceptor who have elected one of the options set forth in paragraph (1) of this subsection shall retain the option. If the vacancy is not filled, it may be again offered in inverse seniority order to remaining qualified protected employee(s) deprived of employment (not to exceed four employees per offer) in the seniority district.

"(B) If there are no qualified protected employees deprived of employment in the seniority district where the vacancy exists, the vacancy may be offered in inverse seniority order to qualified protected employees deprived of employment (not to exceed four employees per offer) on the system, in accordance with the procedure in subparagraph (A) of this paragraph. Employees offered transfer pursuant to this paragraph will be afforded 30 days to elect one of the options set forth in paragraph (1) of this subsection.

"(C) The provisions of this paragraph shall not prevent the adoption of other procedures pursuant to an agreement made by the Corporation and representatives of the class or craft of employees involved.

"(D) When no bona fide vacancies exist in such craft or class, the Corporation may offer such employee comparable employment for which the employee is qualified, or for which the employee can be trained, in another craft or class. The Corporation shall first attempt to locate a comparable position in a seniority district which encompasses the employee's last work location, and if successful, a transfer notice may be tendered pursuant to subparagraph (A) of this paragraph. If no such position exists, the Corporation may tender the employee a transfer notice involving a position elsewhere on the system pursuant to subparagraph (B) of this paragraph. In the event it is necessary to train an employee after such employee's acceptance of a position pursuant to this paragraph such training shall be provided by the Corporation at no cost to the employee.".

(d) Section 505(i)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(i)(1)) is amended by adding at the end thereof the following new sentences: "The Corporation may simultaneously offer a position to not more than 4 protected noncontract employees. The position shall be given to the protected employee accepting transfer whom the Corporation considers to be best qualified for the particular position involved. Other protected employees who have accepted the transfer shall retain their previous status. Employees who have elected a voluntary suspension of employment at their home location in lieu of protective benefits or a severance of employment shall retain the option elected.".

PAYMENT, AUDIT, AND REPORT

SEC. 504. Section 509 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 779) is amended to read as follows:

"PAYMENT, AUDIT, AND REPORT

"SEC. 509. (a) PAYMENT.—The Corporation, the Association (where applicable), replacement operators, and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), replacement operators, and acquiring

railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title (including such amounts paid by the employer prior to the effective date of the Staggers Rail Act of 1980 and training costs incurred by the Corporation pursuant to section 505(d)(4)(D) of this title), other than provisions with respect to employee pension benefits, not to exceed an aggregate sum of $485,000,000, by the Railroad Retirement Board, upon certification to such Board in such detail as the Board may reasonably require, by the Corporation, the Association (where applicable), replacements operators, and acquiring railroads, of the amounts paid such employees, except that the aggregate amount of reimbursements made by the Board for the payment of monthly displacement allowances in the period after the effective date of the Staggers Rail Act of 1980 shall not exceed $180,000,000. There is authorized to be appropriated to the Secretary annually such sums as may be required to meet the obligations payable under this title, not to exceed the aggregate sum of $485,000,000. Upon the exhaustion of such authorization, the Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall retain responsibility for the payment of benefits otherwise reimbursable under this title, but they shall not be reimbursed therefor. There is further authorized to be appropriated to the Secretary such sums as may be necessary to provide for additional administrative expenses to be incurred by the Railroad Retirement Board in the performance of its functions under this section. Appropriations authorized under this section may be allocated by the Secretary to the Railroad Retirement Board.

"(b) AUDIT.—Beginning October 1, 1980, the Association shall conduct a program audit of the payment of benefits pursuant to this title and shall evaluate the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances. Such audits and evaluations shall be conducted in accordance with such rules and regulations as the Association may prescribe. The representatives of the Association shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to, or in use by or in connection with, the Corporation, replacement operators, acquiring railroads, or the Railroad Retirement Board which pertain to the benefits provided protected employees pursuant to this title and which are necessary to facilitate such audit and evaluation.

"(c) REPORT.—The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on the payment of benefits under this title and the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances.".

RAILROAD HIRING

SEC. 505. Title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.) is amended by adding at the end thereof the following new section:

"RAILROAD HIRING

"SEC. 510. Any protected employee of the Corporation and any employee of the Corporation who is separated or furloughed from his employment with the Corporation (other than for cause) shall, unless found to be less qualified than other applicants, have the first right of hire by any other railroad that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a railroad shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.".

SINGLE COLLECTIVE-BARGAINING AGREEMENT

SEC. 506. Section 504(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 774(d)) is amended to read as follows:

"(d) NEW COLLECTIVE-BARGAINING AGREEMENTS.—Not later than 60 days after the effective date of any conveyance pursuant to the provisions of this Act, the representatives of the various classes of crafts of the employees of a railroad in reorganization involved in a conveyance and representatives of the Corporation shall commence negotiation of a new single collective-bargaining agreement for each class and craft of employees covering the rate of pay, rules, and working conditions of employees who are employees of the Corporation. Such collective-bargaining agreement shall include appropriate provisions concerning rates of pay, rules, and working conditions, but shall not include any provisions for job stabilization resulting from any transaction effected pursuant to this Act which may exceed or conflict with those established herein. Negotiations with respect to such single collective-bargaining agreement, and any successor thereto, shall be conducted systemwide.".

EMPLOYEE PROTECTION PAYMENTS

SEC. 507. Notwithstanding any other provision of law, the Consolidated Rail Corporation and other employers with employees protected under the provisions of title V of the Regional Rail Reorganization Act of 1973 shall, until the effective date of this Act, continue to make payments for employee protection under such Act in accordance with the provisions of such Act which were in effect on January 1, 1979. Notwithstanding any other provision of law, such Corporation and employers shall be reimbursed for such payments in accordance with the provisions of section 509(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 779(a)).

TECHNICAL AMENDMENTS

SEC. 508. (a)(1) The item relating to section 509 in the table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended to read as follows:

"Sec. 509. Payment, audit, and report.".

(2) The table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended by inserting immediately after the item relating to section 509 the following new item:

"Sec. 510. Railroad hiring.".

(b) Section 102(16) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702(16)) is amended to read as follows:

"(16) 'Secretary' means the Secretary of Transportation or the designated representative of the Secretary;".

(c) Section 201 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711) is amended—

(1) by amending subsection (d)(2) to read as follows:

"(2) three Government members, who shall be (A) the Secretary, acting directly or at any time through the Deputy Secretary of Transportation, the General Counsel of the Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration, (B) the Secretary of the Treasury, acting directly or at any time through an officer of the Department of the Treasury who has been appointed with the advise and consent of the Senate, and (C) the Chairman of the Commission, acting directly or at any time through the Vice Chairman of the Commission; and";

(2) striking out "through their respective Deputy Secretaries" from the first sentence of subsection (i) and inserting in lieu thereof "in the case of the Secretary, through the Deputy Secretary of Transportation, the General Counsel of the Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration, and, in the case of the Secretary of the Treasury, through an officer of the Department of the Treasury who has been appointed with the advise and consent of the Senate"; and

(3) by striking out the first sentence of subsection (j)(4).

(d) Section 501 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771) is amended—

(1) in paragraph (6), by inserting immediately after "disability," the following: "failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions,"; and

(2) by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(12) 'compensation' means earnings in employment subject to the Railroad Retirement Act.".

(e) Section 507 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 777) is amended by inserting ", section 509(b), or section 509(c)" immediately after "section 504(d)".

(f) The first sentence of section 403(d)(1) of the Rail Passenger Service Act (45 U.S.C. 563(d)(1)) is amended by striking out "if such State" and all that follows through "service".

TITLE VI—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

SEC. 601. (a) Section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) is amended by adding at the end thereof the following new subsection:

"(f) EXPEDITED PROPOSALS.—(1) Within 240 days after the effective date of the Staggers Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that—

"(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis;

"(B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and

"(C) the proposed transfer is consistent with the goals set forth in section 206(a)(8) of this Act,

the Secretary shall develop such a proposal and may, after providing the Association, the Commission, and the States of Connecticut and Rhode Island an opportunity to review and comment on such proposal, petition the special court for an order to carry out such proposal.

"(2) The Secretary shall establish a fair and equitable price for any rail properties transferred pursuant to a proposal developed under this subsection.

"(3) If the special court determines that a proposal developed under this subsection is fair and equitable, meets the requirements of this subsection, and is in the public interest, it shall issue such orders as may be necessary to carry out such proposal. The provisions of paragraphs (2)-(6) of subsection (d) of this section shall apply to the determination of the special court under this subsection, except that the standards for such determination shall be those set forth in this paragraph.

"(4) In complying with the requirements of subsection (d)(7) of this section with respect to the application of the provisions of title V of this Act to supplemental transactions, the parties to an expedited supplemental transaction under this subsection and the representatives of the employees affected thereby shall enter into a new agreement pursuant to section 508 of this Act and shall not be bound by the terms of any agreement executed under such section

508 and in effect on the date of enactment of the Staggers Rail Act of 1980.".

(b) Section 102(19) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702(19)) is amended by striking out ", within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation".

TITLE VII—MISCELLANEOUS PROVISIONS

ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

SEC. 701. (a)(1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

"(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.),

shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeal is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 914(E)) is amended by inserting "to employees" immediately after "liability".

(b)(1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad and labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Staggers Rail Act of 1980, unless the Rock Island Railroad, and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e)(1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arrangement entered into this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

"(f) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7)) is amended by striking out "Milwaukee Railroad Restructuring Act" and inserting in lieu thereof ", the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act.".

(2) Section 103(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, District of Columbia, on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')".

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c)(1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(h)(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and canceled when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h)(1) (A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(d) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1)(A), by striking out "$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) by amending paragraph (4) to read as follows:

"(4) This subsection shall apply to (A) purchase offers submitted to the Trustee of the Rock Island Railroad Estate and filed with the Commission prior to September 15, 1980 (or such other time as the Secretary considers appropriate), and (B) purchase applications filed with the Commission prior to September 15, 1980 (or such other time as the Secretary considers appropriate) and approved by the court having jurisdiction over the reorganization of the Rock Island Railroad or the Milwaukee Railroad, as the case may be, and by the Commission.".

LOAN GUARANTEES

SEC. 702. (a) To promote competition in the transportation of coal, the Secretary of Transportation shall, no later than 75 days after the date of the issuance of the final environmental impact statement with respect to the loan application, take final action on any application for loan guarantees, under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, to be used in connection with joint ownership, construction, or rehabilitation of any facilities (including support facilities) for a second rail carrier to serve the Powder River Coal Region in Montana and Wyoming.

(b)(1) The Secretary of Transportation shall review the proposed Chicago and North Western connector line route and shall not approve any route which requires the use of any agricultural land unless (A) there is no feasible and prudent alternative to the use of such land, and (B) the proposed route construction plan requires all possible planning to minimize harm to such agricultural land resulting from such use. The Secretary of Transportation may not otherwise disapprove a proposed route for the Chicago and North Western line under the authority of this subsection. This review of a proposed route shall be completed within 90 days after the final action specified in subsection (a) of this section.

(2)(A) The Secretary shall review the use of any agricultural land used in any route for newly constructed line and shall require, to the maximum extent prudent and feasible, that such railroad provide a private grade crossing for the convenience of each landowner whose agricultural holdings are divided by such newly constructed line when the Secretary finds that such division of property will cause a substantial disruption to the agricultural use of such land. The owners of such property shall file a request for such grade crossing with the Secretary within 180 days of the final determination of the route. The finding of the Secretary under this subsection shall be final.

(B) The Secretary shall render a decision on each request for grade crossing under this paragraph within 180 days of its receipt. Such review shall not require the delay of construction of new line under subsection (a) of this section.

(c)(1) Notwithstanding any other provision of law, the actions of the Secretary of Transportation taken pursuant to subsections (a) and (b) of this section shall not be subject to judicial review except as provided in this section.

(2) A claim alleging the invalidity of this section may be brought no later than the 60th day following the date a final action is taken pursuant to subsections (a) and (b) of this section.

(3) A claim challenging an action of the Secretary of Transportation under subsection (a) or (b) of this section may be brought only on the grounds that such action will deny rights under the Constitution of the United States, is arbitrary, capricious, or an abuse of discretion, exceeds statutory jurisdiction, authority, or limitations, or is short of statutory right. Such a claim may be brought not later than the 60th day following the date of such action.

(4) A claim under paragraph (2) or (3) shall be barred unless prior to the expiration of such time limits, a complaint is filed in the United States Court of Appeals for the District of Columbia acting as a special court. Such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim in any proceeding instituted prior to or on or after the date of enactment of this Act.

(5) Any such proceeding shall be assigned for hearing and completed at the earliest possible date, and to the greatest extent practical shall take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court, and such court shall render its decision relative to any claim within 90 days from the date such claim is brought unless such court determines that a longer period is required to satisfy requirements of the Constitution of the United States.

(d) Notwithstanding any other provision of law, the Secretary shall take the final action described in subsection (a) of this section without regard to the consent, or lack thereof, of any Committee of the Congress.

CONRAIL STUDIES AND EMERGENCY FUNDING

SEC. 703. (a) For purposes of this section, the term—

(1) "Association" means the United States Railway Association;

(2) "Commission" means the Interstate Commerce Commission;

(3) "Corporation" means the Consolidated Rail Corporation;

(4) "rail properties" means assets or rights owned, leased, or otherwise controlled by the Corporation which are used or useful in rail transportation service;

(5) "region" has the meaning given such term in section 101(15) of the Regional Rail Reorganization Act of 1973; and

(6) "Secretary" means the Secretary of Transportation.

(b)(1) No later than April 1, 1980,[1] the Association and the Corporation shall each submit a report to the Congress analyzing the impact, upon the Corporation, rail service in the region, railroad employees, the economy of the region, and other rail carriers in the region and elsewhere, and the Federal budget, of—

(A) no further Federal funding for the Corporation;

(B) continued Federal funding of the rail system of the Corporation as it is presently structured; and

(C) future Federal funding of the Corporation to the extent necessary to preserve rail service in the region which can be self-supporting, without undue interim disruption of operations which will be maintained.

(2) Each report submitted under paragraph (1) of this subsection shall contain a description, under each of the Federal funding alternatives set forth in subsection (a) of this section, of the lines of the Corporation which would be maintained, the lines of the Corporation which would be abandoned, and the lines which would be transferred.

(3) Each report submitted under paragraph (1) of this subsection shall also include specific recommendations with respect to—

(A) future projected funding requirements of the Corporation;

(B) future structure and activities of the Corporation in the region;

(C) any legislative action needed with respect to the matters described in subparagraphs (A) and (B) of this paragraph; and

(D) any other matters which the Association or the Corporation considers appropriate.

The specific recommendations submitted under this paragraph shall set forth alternatives for the Congress to consider in the event it determines that modification of such recommendations is appropriate.

(4) In developing recommendations in accordance with this subsection, the Association and the Corporation shall identify measures designed to ensure a financially self-sustaining rail system in the region. The recommendations shall be based on analyses of rail properties which might be proposed for abandonment or transfer to another railroad or qualified person and proposed operating efficiencies which could improve the Corporation's revenue-to-cost ratio.

(5) In developing recommendations under this subsection, the Association and the Corporation shall each analyze and consider—

(A) projections of the Corporation's future traffic, revenues, operating costs, and capital requirements;

(B) rail properties which might be proposed for abandonment or transfer to another railroad or qualified person, taking into account the potential impact of changes in the regulatory environment;

(C) the impact on communities served by lines proposed for abandonment or transfer;

(D) proposed operating efficiencies which could improve the Corporation's revenue-to-cost ratio;

(E) the impact on the Corporation of proposed mergers by connecting or competing railroads;

(F) employee motivation and labor productivity programs and a projection of labor protection costs which could result from the recommendations;

(G) the future capital structure of the Corporation; and

(H) any other factors identified by the Association as relevant to the recommendations required to be developed and submitted pursuant to this section.

(6)(A) The Association and the Corporation shall, on the date of submission of their recommendations to the Congress under this subsection, transmit copies of such recommendations to the Secretary, the Commission, and the Governor of each State that could be affected by such recommendations. Upon request, the Association and the Corporation shall furnish a copy of their recommendations to any interested person.

(B) As soon as practicable after submission of their recommendations to the Congress, the Association and the Corporation shall publish in the Federal Register a summary of such recommenda-

[1] This should read "April 1, 1981".

tions and invite interested parties to comment on such recommendations.

(7) The Commission shall, no later than May 1, 1981, submit to the Congress its comments on the reports of the Association, the Secretary, and the Corporation under this subsection.

(8) Not later than April 1, 1981, the Secretary shall submit to the Congress his recommendations with respect to the future structure and operations of the Corporation. Not later than May 1, 1981, the Secretary shall submit to the Congress his comments and recommendations with respect to the reports of the Association and the Corporation under this subsection, and shall make any changes in his recommendations that he determines are necessary.

(9) The antitrust laws, as defined in section 601(a)(3) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 791(a)(3)), shall not apply to any action taken by the Association or the Secretary prior to May 1, 1981, in accordance with and under the authority of the provisions of this subsection.

(c) The Corporation shall, no later than March 15, 1981, submit to the Congress an analysis of the effects upon the Corporation and its employees of alternative changes in labor agreements and related operational changes. Such report shall include an analysis of any Federal funding that will be required.

(d) The Corporation shall, no later than January 15, 1981, submit to the Association its projections of the benefits to the Corporation of the Staggers Rail Act of 1980, its projections of changes needed in the structure of the rail system of the Corporation including properties which may be abandoned or transferred, and other projections of potential savings or increased revenues to the Corporation.

(e) Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)), as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(4) Purchases of up to $329,000,000 of a series A preferred stock shall be made by the Association, subject to the availability of appropriations, as required and requested by the Corporation, if the Finance Committee makes an affirmative finding that the Corporation has taken appropriate action to eliminate losses on light density lines and other lines which are unprofitable. Such action shall include the imposition of surcharges on such lines, the abandonment of such lines, and the transfer of such lines.".

(f)(1) Section 216(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(a)) is amended by striking out "$2,300,000,000" and inserting in lieu thereof "$2,629,000,000".

(2) Section 216(g) of such Act (45 U.S.C. 726(g)) is amended by striking out "$3,300,000,000" and inserting in lieu thereof "$3,629,000,000".

(3) Section 210(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 720(e)) is amended by inserting immediately after "section" in the first sentence thereof the following: "or under subsection (a) of section 306 of this Act".

USRA AUTHORIZATION OF APPROPRIATIONS

SEC. 704. Section 214(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 724(c)) is amended to read as follows:

"(c) ASSOCIATION.—For the fiscal year ending September 30, 1981, there are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this Act such sums as are necessary, not to exceed $30,000,000. Sums appropriated under this subsection are authorized to remain available until expended.".

FEEDER LINE REHABILITATION STUDY

SEC. 705. (a) The Secretary of Transportation and the Secretary of the Treasury shall jointly submit to the Congress, within 9 months of the effective date of this Act, a comprehensive report on the anticipated effect (including the loss of revenue to the Federal Treasury) of amending section 103 of the Internal Revenue Code of 1954 to provide an exemption from taxation for obligations incurred in connection with the rehabilitation of railroad feeder lines. Such report shall also include such criteria as may be necessary to prevent the abuse of such special tax status.

(b) For purposes of this section, railroad feeder line rehabilitation includes the acquisition, construction, reconstruction, or erection of any feeder line roadbed, track, trestle, depot, switching, and signaling equipment, or any other rail equipment (other than rolling stock)

EFFECT ON PENDING MATTERS

SEC. 706. In the case of any proposal docketed with a rate bureau prior to the effective date of this Act which is or becomes the subject of an application or proceeding before the Interstate Commerce Commission, such application or proceeding shall be determined as if this Act had not been enacted, and the antitrust immunity provided in section 10706(b) of title 49, United States Code, resulting from approval of such agreement shall continue in effect.

CONSTRUCTION OF AMENDMENTS

SEC. 707. With respect to the relationship between water carriers and rail carriers, none of the amendments made by this Act shall be construed to make lawful (1) any competitive practice that is unfair, destructive, predatory, or otherwise undermines competition and that was unlawful on the effective date of this Act, or (2) any other competitive practice that is unfair, destructive, predatory, or otherwise undermines competition.

SURPLUS PROPERTY

SEC. 708. Notwithstanding any other provision of law, the Consolidated Rail Corporation shall be considered a Federal agency for the sole purpose of Department of the Army Regulations 735-5, paragraph 1-16. Such Corporation may enter into a contract under the authority granted by this section only when it determines that the safety of the public so requires.