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Senate

The Senate met at 10:30 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

We praise You, dear God. You are the same yesterday, today, and forever. Your love is constant and never changes. You have promised never to leave or forsake us. Our confidence is in You and not ourselves. We waver, fall, and need Your help. We come to You in prayer not trusting in our goodness, but solely in Your grace. You are our joy when we get down, our strength when we are weak, our courage when we vacillate. You are our security in a world of change and turmoil. Even when we forget You in the rush of life, You never forget us. When we feel distant from You, it was we who moved, not You. Thank You for Your faithfulness.

Filled with wonder, love, and gratitude, we commit this day to live for You and by the indwelling power of Your spirit. Control our minds and give us Your discernment. Fill us with Your sensitivity to people and their needs and give us empathy in caring for the people who are troubled. Give us boldness to take a stand for what You have revealed is the application of Your righteousness and justice for our Nation.

Thank You for the privilege of living this day to the fullest. In the all powerful name of our Lord. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Idaho, Senator CRAIG, is recognized.

SCHEDULE

Mr. CRAIG. Mr. President, today there will be a period of morning business until the hour of 12:30 with Senators permitted to speak for up to 5 minutes each. The following exceptions would be Senator DORGAN, or designee, for 45 minutes; and Senator THOMPSON, or designee, for 45 minutes.

Following morning business the Senate will recess from 12:30 to 2:15 for the weekly policy conferences to meet. At 2:15 today the majority leader has stated that the Senate will begin consideration of calendar No. 247, which is S. 1396, the Interstate Commerce Commission Sunset Act of 1995. Rollcall votes are, therefore, possible during today's session of the Senate.

Mr. President, seeing no person here wishing to speak in morning business, I note the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CRAIG). Without objection, it is so ordered.

Mr. KYL. I ask unanimous consent to speak as in morning business for up to 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. I thank the Chair.

SENDING UNITED STATES TROOPS TO BOSNIA

Mr. KYL. Mr. President, I wanted to speak this morning in response to President Clinton's address to the Nation last night regarding the sending of American troops to Bosnia. I think the President made a strong case for support for his position, but I do not think that he made a strong enough case to justify sending American ground troops to Bosnia. I would like to address that point this morning because, obviously, in the Senate and in the House we are going to begin a debate which could last a couple of weeks here. After there are hearings, after there are briefings, presumably we will be voting on the issue, and I think it is important for us to begin to lay out the various issues, to get response from the American people, to discuss the matter among ourselves, and then be able to make an informed judgment.

I would note that in checking this morning I found that since we began keeping track of it in my office, we have received 400 calls against sending American troops to Bosnia and 6 calls in favor. And I spent a fair amount of time during the Thanksgiving recess speaking with groups in Arizona and appearing on various radio programs. In each case, the response was similar to the one which I just indicated. That is not dispositive, but I think it is an important indicator of the fact that the American people do not sense there is a sufficient degree of interest here for the United States to participate.

It seems to me there are two basic criteria which need to be satisfied in order to justify the sending of a large number of American ground troops into a situation where, as the President and the Secretary of Defense have both acknowledged, there is certainly a danger of some casualties.

The first criterion which has traditionally been applied is that there is a national security interest of the United States at stake. Sometimes it has been expressed as a vital national security interest.

The second is more operational. It generally divides into about three subcategories: that there is a very clear and important mission; that the rules of engagement are clear and

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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agreed to; and that there is a clear exit strategy.

Let us talk about both of those in the context of the President's remarks last night.

I did not really hear a justification for the first point, that is to say, that there is a vital U.S. national security interest involved here. I heard some talk about the fact that it was important for the United States as a key participant in NATO to be involved in NATO operations, and I also heard that we wanted to prevent conflict from spreading throughout Europe. Both of those have a national security element to them, but neither goes directly to the question of vital U.S. national security interests. If, for example, someone could make the case that war in Europe was about to break out, while American lives may not be directly in jeopardy, I think few of us would deny that vital interests of the United States would be at stake sufficient for us to commit to not only ground troops but other kinds of military operations to try to prevent that. But that case is not made here.

The possibility that there will be some additional civil strife in Bosnia does not suggest the conflict is going to engulf Europe. The situation is very different than it was before World War I. The Austro-Hungarian Empire no longer exists. The conditions are simply not the same. So it seems to me a real stretch to say there may be some additional conflict break out, that that would necessarily engulf Europe in war and therefore at this point the United States needs to send these troops in order to conclude that. That is just not a credible argument.

As to the argument about NATO, it seems to me that either NATO is a strong alliance or it is not. I believe it is a strong alliance. If the President is suggesting that the difference between NATO continuing to exist as a strong alliance and its complete failure is whether or not 20,000 of the 60,000 ground troops in this operation are U.S. troops, if that is the difference between NATO existing and not existing, then NATO is in much worse shape than I thought it was, and I think, frankly, it just is not true.

NATO is strong. And since we are providing a great deal of the support for the existing NATO operation, and will continue to do so under this peace process which has been negotiated, in terms of the seapower that we have projected, the airpower, the reconnaissance, the intelligence, obviously, monetary support that we will be providing and material support and a lot of other things, since we have been doing those things and will continue to do them as part of the NATO operation, it does not seem to me that we are subject to criticism that we are not supporting the NATO operation. It is just a question of whether some of the ground troops are going to be U.S. troops or not.

My understanding is that the British and French and perhaps others in NATO insisted that part of the ground contingent be United States troops. That is not a justification for saying that therefore we must go. I would have to ask our allies, why? Why is it that you insist that not only do we pay for most of the operation and that we send our ships and our cargo planes and our jet fighters and reconnaissance planes, and all of the other equipment and personnel that we have in the region, in addition to all of that, a necessary component of this is that 20,000 of the 60,000 ground troops be U.S. troops? Why is that so essential? Is it because the Europeans do not have another 20,000 troops? No. That is not it. It is because they want us to be in the operation on the ground. And my question there is, why? Why is it that that is so essential? If this matter is so important to the Europeans, then it seems to me that they would pull out all of the stops to enforce this peace settlement including providing the necessary ground troops to make it work. And surely among all of the NATO countries there are 60,000 ground troops available.

So one has to answer the question I think, why do our Europeans allies insist on this? I cannot think of a satisfactory answer.

So back to the first criterion. Is there a vital U.S. national security interest? The answer is no, and the President has not made the case for it.

Let me contrast this with the Persian Gulf war because a lot of people have tried to say that, like the Persian Gulf war, we need to follow the lead of the President and accede to his request for ground troops. The Persian Gulf war and this situation, it seems to me, are relatively close cases, both of them, but one falls on the side of supporting the operation and the other falls on the side of not supporting it. And here is why. Let us say on a scale of 1 to 10, vital national security interest being 10, Pearl Harbor created a vital national security interest for the United States to be involved in World War II. No question. That is a 10.

The Persian Gulf war was a situation in which most of our oil, a majority of our oil, came from the Persian Gulf. Its supplies were threatened. A foreign country had invaded another country, was occupying it and was threatening to invade other countries. At that point, it was important for the world community to come together and say to this aggressor, ''No. Aggression will not pay. We will remove you from Kuwait, take you back to where you came from. You have got to stop threatening all the people whose oil supplies come from that region.''

That is not the same as Pearl Harbor, but clearly vital U.S. interests were involved. And, in fact, worldwide, countries came together, even other Arab countries came together, in an effort to stop that aggression. And I guess on a scale of 1 to 10, I would say that is a 6 or 7. As I said, that is a much closer call than a Pearl Harbor, but still justified our action. And a majority of our people and the Congress supported President Bush's decision to engage in military operations against Iraq.

This case in Bosnia, I submit, falls on the other side of the line, if you want to say five is the middle ground. It seems to me there is only one reason why it rises to the level of maybe a three or four. That is the moral imperative.

Now, a moral imperative is not the same thing as a vital national security interest of the United States, but in certain instances it may call upon the United States to do something. That is why the United States has been involved in various humanitarian missions. It is why we went into Somalia with a humanitarian mission to begin with. It is why we were not justified in changing that mission as it later was changed.

The United States has done lots of things for a lot of people around the world in a humanitarian way for moral reasons. In addition to the humanitarian support that we provided, we also have supported some military operations in support of the humanitarian effort. But that is different from saying that in addition to air operations and sea operations and humanitarian operations and peacekeeping operations, in addition to all those things the United States must send 20,000 ground troops to keep the peace that has been negotiated at Wright-Patterson Air Force Base.

So, yes, there is a moral imperative. That is what makes this a relatively hard case. But it does not rise to the level of a vital national security interest. It says that we ought to be doing something. And we are doing something, and we will continue to do more.

I submit that the one thing that we should have been doing a long time ago is still missing from this peace agreement, and that is ensuring that Bosnia can defend itself. For a long time many of us in this body have argued for arming the Bosnians, the Bosnian Moslems, so they can defend themselves. We always believed that a rough parity would eventually be created sufficient to cause the Serbs to come to the bargaining table.

What happened when Croatia, after about 3 years, was able to build up its military forces sufficient to retake some of the territory that the Serbs had taken from them? At that point, the Serbs became defensive rather than offensive in their military operations. They also came to the bargaining table because they understood that it was a losing game for them, that the longer they persisted, the more territory likely would be taken from them.

So a military balance of forces of some sort was, in fact, created. That is what we have sought when we said we needed to lift the arms embargo and support rearming the Bosnian Moslems so they could defend themselves. And

yet that commitment is not part of this particular peace agreement. So it seems to me that the one thing that we could do in this situation we have not done in this particular peace agreement.

Turning for a moment from the vital national security interest, let us go to the other part of the equation, the second part. The mission has not been clearly defined. The rules of engagement have not yet been established. And, third, there is no exit strategy. Tony Lake, the National Security Adviser, was quoted in the newspapers yesterday—I think he made the statement Sunday—that our first mission is self-defense.

Mr. President, the way you fulfill that mission is by not sending the people in the first place. That is not a mission. That is very muddled thinking to suggest that our first mission there is self-defense.

The mission has to be stated much more clearly, and it has not been, nor have the various contingencies been defined. What happens if various kinds of military conflicts break out? We have not decided how we are going to handle those things. And that has to do also with the rules of engagement. They have been only very generally stated up to this point. As my colleague, Senator MCCAIN, has pointed out, what is really glaringly missing is any kind of an exit strategy. A 1-year timetable is not an exit strategy.

What is to prevent mission creep, and what is to define success of the mission? Most observers have said for this peacekeeping mission to really succeed, it is going to have to be a commitment of years, perhaps decades. And that gets to the next point, Mr. President.

Perhaps the primary justification that the President has given for sending American ground troops to Bosnia is that if we do not do so, the war will reignite and there will be additional suffering. In other words, if you believe in war, you vote no; if you believe in peace, you vote yes. That is a false choice, Mr. President. That is a false choice.

If this peace that has been negotiated is so fragile, if it is so fragile that the only thing between peace and war is that of the 60,000 ground troops, and 20,000 have to be Americans, then this is a peace which is bound to fail. It is not a peace of the heart. It is not a peace that has been committed to by the belligerents, but rather a convenience that has probably been forced upon the parties and is probably doomed to, if not failure, at least a very rocky road, which means a lot of casualties on the part of the peacekeepers. And that is a situation we need to take into account before we support the President's decision to send the troops.

What is it that makes the 20,000 American ground force contingent sine qua non, to use that Latin phrase, that without which this peace agreement cannot succeed? We are already providing sea power and air power and reconnaissance and intelligence and humanitarian assistance, diplomatic assistance, monetary assistance. The President has committed to some additional monetary assistance. We are already providing a lot of things to promote peace in the region.

Our European allies have said we need a ground contingent of 60,000. They are willing to support that with 40,000. What is it that makes the additional 20,000 required to be American troops? Why cannot they be European? Is the President saying that if all 60,000 are European, the agreement will fail? That is what he said in effect. What is the magic of 20,000 of those being American? ''Well, America has prestige, and American prestige is necessary to enforce this agreement.''

American prestige will be demonstrated every time a U.S. fighter jet passes overhead. It will be demonstrated every time you look out to sea and see one of our carriers or destroyers cruising in the Adriatic. It will be present with the diplomatic presence of the United States, the power of the U.S. Presidency and our support for NATO, and demonstrated in 100 ways.

What is it that is so magical about one-third of the ground troops being American? Sure, that will demonstrate an additional presence, but is it absolutely essential?

It is the difference between war and peace, the President says. If it is—and I doubt that it is—but if it is, then this peace is too fragile, in the first place. We already have signs that that is true with some of the Serb leaders saying in effect, no, never, that blood will be spilled, that they are not going to go along with this.

So, if the basic criterion, as the President laid out, was that there would be peace, and we would simply be implementing the peace, one questions whether that condition will even exist when our troops hit the ground over there, if they do.

There has been another justification, and I think that this is perhaps one of the most difficult for us to deal with because all of us support, not only the President, but the office of the Presidency. We generally try to defer to the President and the executive branch in foreign policy matters to a large extent, anyway. But the Senate has certain constitutional prerogatives. We have the advice-and-consent prerogative. We have the ability to ratify treaties, and so on.

The President, in effect, has invited the Congress to decide whether or not to support his action or not. So I do not think there is any question that we need to make an independent judgment here of whether or not the sending of these troops is a good idea. But the argument of the President in this regard goes something as follows. Up until the time that the agreement in Dayton was initialed, we were not supposed to debate the issue because, after all, there was not anything to debate. We had not decided what to do.

Well, the reality was the President had already committed to send the 20,000 troops, but we were not supposed to debate that because the agreement was not clear yet. So we did not. We basically deferred. There were many of us here, myself included, who wanted to speak much more specifically about it, to ask a lot of questions, and perhaps to lay down some conditions for the peace agreement, but we did not do that out of deference to the President.

But now the argument goes, once the agreement was initialed, ''You would be pulling the rug out from under the Presidency, indeed from under U.S. foreign policy, if you did not approve my commitment to send 20,000 American troops.''

That is a catch-22, Mr. President. You cannot argue about it before the treaty is initialed and as soon as it is initialed, it is too late to argue about it. So when are we going to have the debate as to whether or not this is good policy?

It is true, if the Congress turned its back on the President at this point, there would be some embarrassment to the United States. The question we have to ask ourselves is: Is the risk of casualties and is the precedent which is being set to send these troops outweighed by some temporary embarrassment to the United States?

I submit at this point, at least I have concluded that the answer to that is no, that the Congress has to make it clear to the President that he cannot simply go around making premature commitments without the advice and consent of the Congress, commitments which some of us believe not to be wise, and then justifying the support for that on the basis that the commitment was made and, therefore, cannot be questioned anymore.

Either you consult with the Congress in advance and have some sense that you have the support of the Congress and the American people and then argue, once the commitment is made, that it is too late to argue about it, or at least I think you have been estopped, to use a legal phrase, to argue there should not be a robust debate about it after the decision has been made. My point is, there is no argument to say, ''I made the commitment to send the troops and now it would be embarrassing to the United States, it would diminish the leadership role of our country if I were not backed up in that commitment,'' to use the President's argument.

My point is very simple. The President should have thought of that before he made the commitment. He made a commitment, and I think at this point we have to debate it.

The bottom line is this: The President has not demonstrated a vital national security interest of the United States involved, nor has there been a

clear delineation of the operational aspects, its mission, the rules of engagement, and the exit strategy.

Until those cases are made, I think the President is asking too much of us to commit U.S. ground troops to this operation. Therefore, Mr. President, it would be my hope that after we have had a full debate, after there have been hearings, after there have been briefings by the administration, and after we have had an opportunity to consider within this body and the House has had an opportunity to consider it, that we would have a vote on the matter; that we be able to express ourselves either to support the President's request or to reject it.

At this point, my own view is that we reject it. I invite any debate and any rationale that can be expressed in support of the President's position. As I said, at this point, I think it is far too serious a matter for the United States Congress to support the President's request that 20,000 ground troops be sent to Bosnia, in addition to all the other things which we have already done and which we continue to do.

I close with this point. Nobody wants this tragedy to continue. Everybody wants peace to succeed. We all commend the President and those who negotiated on his behalf for this peace agreement, and I would want to do everything we could to support that agreement, short of the commitment of these ground troops. They are not the necessary ingredient to make it work. If they were, it would be destined to fail.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Vermont.

AMERICAN TROOPS IN BOSNIA

Mr. LEAHY. Mr. President, the debate over whether the United States should contribute its troops to a NATO peacekeeping force in Bosnia will be the focus of many speeches on this floor in the coming days. It is a subject all of us have anticipated and pondered and wrestled with for some months now, and it is one of those decisions that no one likes to make. It is fraught with uncertainties and the undeniable likelihood that Americans will be injured or killed.

There will be many chances to speak on this, but having thought about it for some time and discussed it with the President and Secretary of Defense and others over the past weeks, and after listening to the President's speech last night and the responses of some of those who oppose sending troops, I want to say a few words as the debate begins.

Mr. President, even before the peace agreement was signed at Dayton, the House of Representatives passed legislation to prevent the President from deploying U.S. troops to enforce a peace agreement without the consent of Congress. I believe the President should seek the approval of Congress before sending troops to Bosnia, although I do not believe the Constitution requires it in this instance where the parties have signed a peace agreement. I felt it was both unhelpful and unnecessary for the House to pass legislation in the midst of the negotiations and before a peace agreement was signed.

But just as President Bush sought congressional approval for sending U.S. troops to the Persian Gulf—although half a million were there before approval was given—President Clinton has sought congressional approval, and there will be ample time to debate it before the formal signing of the agreement.

The decision to send Americans into harms way is the most difficult and dangerous that any President has to make. It should be done only when a compelling national interest is at stake, and when there is no other alternative.

Like many or perhaps even most Senators, the majority of my constituents, at least of those Vermonters who have contacted me, do not believe that it is in our national interest to send Americans to Bosnia. They genuinely fear another costly, drawn out quagmire like Vietnam. Some of them fought in that war, or had family members who died there. Others fear a debacle like Somalia, where in a matter of days a well-intentioned humanitarian mission became a poorly thought-out, ill-prepared peacemaking mission that ended in tragedy.

It is the President's job to convince the American people that Bosnia is not Vietnam, it is not Somalia, and that our national interests compel us to take part. He made a good start last night. There are still important questions that need answers—the President said as much himself—but I am convinced that the case for sending Americans to Bosnia can be made, and I intend to help the President make it.

Mr. President, in the past 4 years, a quarter of a million people, the vast majority defenseless civilians, have lost their lives in the former Yugoslavia. We have all read the blood curdling reports of hundreds and even thousands of people being rounded up at gunpoint and systematically executed or even buried alive.

Countless others have had their throats cut after being horribly tortured. Some have been made to eat the flesh and drink the blood of their countrymen. Thousands of women have been raped. Men have been forced to watch their wives and daughters raped and killed before their eyes. All simply because of their ethnicity, or because they lived on land others wanted for themselves.

The war has produced 2 million refugees, victims of ethnic cleansing. Hundreds of thousands more have lived in squalor for years in the rubble of what remains of their homes, without electricity, heat, or running water.

There are many, including myself, who believe that NATO should have acted much earlier and with far greater force to stop the genocide in Bosnia. I opposed the use of American ground troops to try to win the war, but we gave too much deference to those who said that airpower would never compel the Serbs to negotiate peace. NATO should have been given the authority to use unrelenting force when U.N. resolutions were violated time and again with impunity.

Our greatest collective failure was to put the United Nations in charge of a peacekeeping mission where there was no peace to keep, and when it was unwilling or unable to back up its own threats. These failures, which caused grievous damage to NATO's credibility, will haunt us for years to come.

But the situation has changed dramatically since then. Sustained NATO bombing, coupled with gains by the Moslem and Croat forces on the battlefield, have shown the Serbs that they cannot win what they set out to achieve. The exhaustion of the warring factions, coupled with a period of extraordinarily forceful American diplomacy, has created an unprecedented opportunity to end one of the most brutal wars the world has seen in half a century.

There should be no mistake. The credibility of the U.S. Government is deeply invested in the success of the peace agreement, and success of the agreement depends absolutely on NATO's enforcement of it. The parties signed with that understanding. At the same time, NATO's own credibility and effectiveness depend on U.S. leadership. Indeed, without U.S. participation, there will be no NATO force, and the peace agreement will almost certainly collapse.

Mr. President, since the breakup of the Soviet Union and the end of the cold war, NATO's future has been uncertain. Some have suggested that NATO has outlived its usefulness. Others say that since the rationale for NATO—deterring a Soviet invasion of Europe—is gone, NATO should become a political alliance. Still others want to quickly expand NATO to include all or most of Eastern Europe, and perhaps even some of the former Soviet republics.

I mention this because NATO's future is one of the most compelling reasons why it is essential for the United States to participate in a NATO peacekeeping force in Bosnia.

I have been among the strongest supporters of assistance to Russia and the other former Soviet States. A democratic Russia is obviously a major foreign policy priority for the United States. Despite many setbacks, there has been remarkable progress in Russia, Ukraine, and elsewhere in the former Soviet Union. But who can predict the next decade? Who can say that the fervent nationalism that remains strong there will not increase to a point when it becomes threatening? It is simply too soon to say what lies beyond this transitional period.

I have been reluctant to support the rapid expansion of NATO without a thorough discussion of the implications, for fear that it could fuel the very nationalism in Russia that we seek to discourage.

But neither am I among those who see no role for NATO today. On the contrary, the United States has an enormous stake in preserving NATO's strength. While NATO's focus will undoubtedly shift over time, the future holds too many uncertainties, and there are too many areas of potential conflict around the world where important interests of the United States and our allies are at stake, to allow NATO's strength to erode.

There is no other alliance that comes close to NATO, in power, in readiness, and in importance to the United States. NATO may not have sought the role of peacekeeper in Bosnia, but neither can it avoid it.

Mr. President, I cannot say whether this peace agreement will survive the test of time. Perhaps no one can. There is ample reason to be pessimistic, given the history of broken promises and ethnic hatred in the former Yugoslavia. Since the agreement was signed, it has become clear that no party is completely satisfied, and some have expressed grave misgivings with some aspects of it. If the agreement unravels, NATO forces may be forced to withdraw, rather than be drawn into the fighting. Even withdrawal would be risky.

But virtually everyone knowledgeable about the situation there agrees that this is by far the best chance for peace since the war began 4 years ago. We and our European allies have an immense interest in preventing the continuation of a destabilizing war in Europe, and I believe we must take this chance.

The President has taken a courageous step, a step that reflects the best of this country. Every American should consider the alternative. More mass murder. More towns shelled and burned. More starving children. More orphans. More horrifying atrocities that are reminiscent of the dark ages. If this does not compel us to help enforce an agreement we brokered to end this calamity, what further amount of inhuman brutality would it take? Should we wait for the slaughter of another 100,000, or 200,000?

The President is right. We have a moral responsibility to take part. The Europeans were unable to end the war themselves. United States leadership was not the only factor, but without it there would be no peace agreement, and the war would go on indefinitely. We should be proud of it, and stand behind it.

Some have suggested that we can lead without sending troops. I disagree. We cannot maintain our credibility as the leader of NATO if we are not prepared to assume some of the risk. We should remember that two-thirds of the NATO force will be troops from our NATO allies and others.

Mr. President, our troops are the best trained in the world, but we cannot eliminate the risks. There are 2 million landmines in Bosnia alone, hidden under mud and snow. Each one cost only a few dollars, but one false step could mean the loss of any American soldier's legs or life. The Pentagon says that landmines are among the most serious threats our troops will face there.

This is ironic, since the Pentagon has been actively lobbying against my efforts to show leadership by halting the use of antipersonnel landmines, which claim hundreds of innocent lives each week. Two-thirds of the Senate voted for it, but the Pentagon refuses. In the past few months, several of our European allies have stopped their use and production of these indiscriminate weapons, but the Pentagon refuses.

A quarter of the Americans killed in the Persian Gulf died from landmines. A quarter of American casualties in Vietnam were from mines. I can only wonder how many more Americans will needlessly lose their legs or their lives from landmines before the Pentagon gets the message.

We cannot eliminate the risks, but President Clinton has established the right conditions before US troops can be deployed. If the mission is limited in time, clear in scope, and achievable, as the President has insisted, we should support it. Our troops must be backed by broad rules of engagement that enable them to defend themselves with whatever amount of preemptive force is needed in any circumstance. That does not mean waiting to shoot until they are shot at.

Mr. President, I expect to speak again as the debate on this unfolds. I intend to support the President, and I expect there will be Senators I deeply respect who are on the other side. But at the end of the day, if Americans are sent to Bosnia as I believe they will be, I have no doubt that we all will support them, and we will all be proud of them.

The PRESIDING OFFICER. The Senator from Arkansas.

TRIBUTE TO MAURICE ''FOOTSIE'' BRITT, AN AMERICAN HERO

Mr. BUMPERS. Madam President, I rise today to pay tribute to one of America's greatest heroes, and certainly one of Arkansas' greatest, if not the greatest, hero in the history of our State. He is Maurice ''Footsie'' Britt, born in the small town of Carlisle, AR, and raised in the small town of Lonoke, AR. He was a football star at the University of Arkansas and Honorable Mention, All American.

I first met Footsie in the barbershop of my hometown of Charleston, population 1,200. He had his campaign literature under his right arm—or his right stub. He did not have a right arm. He was running for Lieutenant Governor on the Republican ticket with Winthrop Rockefeller. He had all his literature under his stub and would use his left hand to pull it out and hand it to you.

As I got out of the barber's chair and paid the barber 50 cents for the haircut, this was 1966, Footsie Britt walked in. He had been a real hero to me, and I was honored to meet him. Winthrop Rockefeller became the first Republican Governor since Reconstruction in my State. In my opinion, he would have never been elected if he had not had Footsie Britt as his running mate.

But to go back, he was the first American to ever receive the three highest awards the American military can grant for valor and bravery in one war. He held the Congressional Medal of Honor, the Distinguished Service Cross, and the Silver Star. I do not know whether anybody has ever equaled that since then or not.

What happened to the right arm? It lay on the battlefield near Anzio, Italy, where he had been a lieutenant in World War II. As I walked around the battlefield at Anzio last year, as the President and numerous Members of Congress went to Normandy and Anzio, I thought ''Where did Footsie lose his arm?''

Madam President, he not only received the three highest honors that our military can bestow, he received the highest honor that Britain bestows on any non-Englishman, the Military Cross, and the highest award that can be bestowed by Italy on any non-Italian, the Cross of Valor.

He was in charge of a platoon and leading a group of men near the beach at Anzio. He saw that some of his men were getting out in front of the others. He knew that the Germans were ahead of them and on either side of them. And as he had feared, the others got so far ahead of the rest of the group that the Germans had them surrounded. They knew it, and they surrendered.

The Germans took the American soldiers as shields, as hostages, and began to march them toward the other Americans that Footsie commanded. The Americans held their fire, obviously. And just as they got close enough, Footsie shouted, ''Now hear this order by me. Hit the mud!'' And every one of the American hostages immediately fell down and lay in a prone position. The Germans, not speaking English and being dumbfounded by the order, were confused just long enough for Footsie and his men to mow all the Germans down, saving all the hostages.

If Footsie Britt had an enemy in this country, I am not aware of it. He was a beloved public servant, not a strident partisan, just an all-around good guy. He saw his duty and did it. He was later appointed head of the Arkansas Small Business Administration where he served for 14 years. His wife, Pat, preceded him in death several years ago.

Two weeks ago I went to the John L. McClellan Veterans Hospital in Little Rock, as I do every Veterans Day. The first room I went to was Footsie Britt's. He had lost a piece of a foot as

well as his arm at Anzio, and being an acute diabetic, 48 hours before had had one of his feet amputated. I walked into the room, and I could hardly believe that Footsie had had that foot operated on and removed just 2 days before.

He said, ''Senator, I just want you to know I think Betty Bumpers was the most gracious First Lady the State ever had. She was always unfailingly polite and friendly to me. And I hope you will tell her that.'' Shortly thereafter, they had to amputate more of the leg, and his heart just gave out.

To youngsters I speak to in high schools and colleges, I always remind them of how lucky they are to live in this country, how many sacrifices so many brave men and women have made to provide them with the freedom, the rights they enjoy, all the protections of our sacred Constitution. They do not understand what I am saying. They cannot possibly understand what I am saying. But I say it again today, Madam President. They, you, I, and every American have lost one of our greatest heroes with the death of Maurice ''Footsie'' Britt, a true immortal.

TRIBUTE TO DON PEOPLES

Mr. BAUCUS. Mr. President, in Montana, we call Butte the Can-Do City. And there is nobody who personifies Butte's can-do spirit more than its former chief executive, my friend, Don Peoples.

Butte's paper, the Montana Standard, recently ran an article about Don's career in Butte. Don is a modest person; a man of few words. And I suspect he is a little bit uncomfortable with all this attention. But it is attention he richly deserves.

Mr. President, I ask unanimous consent that the Montana Standard article be printed in the RECORD. And I ask my colleagues to take a moment to read about how a remarkable man has made such a difference for his community and home State.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Montana Standard, Nov. 27, 1995]

PERSEVERANCE THAT TWARTED HARD TIMES

(By Erin P. Billings)

Don Peoples still remembers the day in 1983 that shocked Butte and sent its economy spinning downward without warning.

The former Butte-Silver Bow County chief executive was driving back from Seattle, and made a phone call to his office—word was the Anaconda Co. was shutting down its Butte mines and laying off nearly 1,000 workers. Peoples was devastated.

''Nobody thought it was going to happen,'' the 56-year-old Butte native remembers, shaking his head in disbelief. ''That was a devastating day for a lot of people.''

''I saw so many people hurting,'' he says.

Many long-time Butte residents were struggling to find work and flocking elsewhere for jobs. And Peoples, who was sitting at the helm of Butte's government knew it was up to him to restore citizens faith and turn the economy around.

In 1985, ARCO sold the Continental Pit mine to Missoula multimillionaire Dennis Washington—restoring the copper mining legacy and some 325 good-paying jobs to the area. Peoples, many say, was key in bringing that sale to fruition.

''The tax base was eroding, people were leaving—the major element of an economic decline,'' says Evan Barrett, executive director of the Butte Local Development Corp. ''He kind of carried this city by its boot straps in a time that was really bad.''

For example, Peoples successfully lobbied to exclude the mine from the boundaries of the active Superfund site; pushed for lower power and freight rates; and helped provide the company with a three-year tax break granted by the state.

In addition to helping resurrect the mining industry in the 1980s, Peoples was instrumental in creating Butte's small business incubator, the U.S. High Altitude Sports Center and the Urban Revitalization Agency, which provides grants to help renovate Butte Uptown buildings.

By 1988, nine years after Peoples took office, Butte's economy had begun to forge forward and the city received national recognition as a National Civic League ''All-American City.'' More than 900 cities nationwide competed for the designation, which 10 cities received that year.

''Don has a dogged preservance to get things done,'' says Jack Lynch, who has served as chief executive since 1990. ''He's not someone who can sit and watch.''

That and Peoples' positive attitude are characteristics Lynch says he tries to emulate as the county's current leader.

Peoples chose to trade his life in the public eye in 1989 for the private sector and a financially attractive opportunity to serve as head of a major Butte research and development firm—MSE Inc.

A decision, he says, he's never regretted.

''You had to be places, when you didn't want to be there,'' the slender, 6-foot-2-inch Peoples says of being county chief executive. ''Now, I have a choice.''

Although Peoples no longer governs 34,000 residents in Silver Bow County, he is still active in the community and plays the role as a leader to some 200 employees.

And many of his associates say Peoples' dedication is as impressive as his resume. As a community leader, he holds positions with organizations such as the Deaconess Research Institute in Billings, St. James Community Hospital and the Montana Tech and Butte Central Education foundations. He also is active on the Butte-Silver Bow Chamber of Commerce board and an appointee to the Montana Commission on Higher Education for the '90s.

Each day, Peoples serves as chief executive officer and president of MSE, where he has successfully put the technologies firm on the map.

The company, which once boasted only one research and development contract and had a revenue base of about $12 million, today has tripled its revenue base and has more than 20 contracts.

Agencies including the U.S. Energy and Defense departments and NASA count on the firm for developments in areas such as mine waste reclamation, thermal technology and advanced aerospace technology.

But turning Butte's economy around, and helping to develop one of the county's largest businesses hasn't been easy.

Those who know Peoples quickly point to his tenacity, aggressiveness and work ethic—qualities which allow him to get things done.

Part of what drives him, people remark, is his tireless devotion to Butte and the people that live there.

The lifelong Butte resident was born in 1939 to Jim and Marie Peoples, and was educated in local schools. His father went on to become Butte's public works director, a position that Don Peoples later held.

''He will do all that he can to fight for (Butte),'' says Gov. Marc Racicot, who has known Peoples for about 15 years.

The two served on the board of trustees together at Carroll College in Helena, a position Peoples still holds. There, Racicot says, Peoples has fought to raise money and promote a code of ethics at the small private school.

''He's got a way of convincing people that anything is possible,'' says Alec Hansen, executive director of the Montana League of Cities and Towns. ''You just keep pushing them and pushing them until something happens.''

When Peoples served as president of the League in 1982, Hansen says, he fought hard in the state Legislature—pushing for workers compensation insurance programs for Montana cities.

''The guy doesn't scare easy,'' Hansen says. ''Nothing is too big—you can do it.''

Peoples says he welcomes a challenge, enjoys taking on big projects and likes to win. But with that, he and others admit, comes Peoples' biggest weakness—impatience.

''I have a fairly good temper,'' be concedes. ''I find the older I get, the easier it is to spout off.''

For example, Peoples says his patience has been tried over the proposed greenway project, which would turn the Silver Bow Creek Superfund site into a green corridor.

The state and ARCO, the company responsible for the cleanup, have battled over whether the mine waste should be removed and treated elsewhere or whether a less costly plan should be implemented that would treat mine waste in place—leaving enough money to develop a public greenway along the 25-mile site.

But Peoples' tendency to occasionally lose his patience hasn't hindered his ability to convince others to get things done, some say.

Barrett says Peoples has an ability to inspire those who work with him, as if he were a coach of a team.

''With Don there's no question that there's a coach and there's a team; he's always a team leader,'' he says. ''He allows people on the team to get their best in.''

''Leaders are far and few between'' and Don Peoples is one of them, says Jim Kambich, director of corporate development and planning at MSE.

A modest Peoples quickly brushes off his success as a leader and credits those that have worked along with him. He attributes his achievements to an ability to find competent, hard-working and loyal players.

''He empowers the people under him to look at new ways to do things,'' Kambich says. ''He doesn't ask anything more of you than he would ask of himself.''

Peoples' team-oriented attitude shouldn't come as a surprise, as he is an avid sports fan, former athlete and 30-years-plus football referee.

On top of that—without missing a day in five years—he runs twice daily as part of a regimen that he says simply keeps him ''feeling right.''

And while Peoples will likely continue to jog daily, he says running for public office again is out of the picture.

''I become less political all the time,'' he says. Besides, ''I think you have to have that fire in your belly.''

RETIREMENT OF SENATOR NANCY KASSEBAUM

Ms. MIKULSKI. Mr. President, I rise to offer my best wishes to our colleague, Senator NANCY KASSEBAUM. Although we will work together for one more year—and I am pleased about that—I want to take this time to express my gratitude to Senator KASSEBAUM for what she has meant to me, to the Labor and Human Resources Committee, and to the Foreign Relations Committee.

First, to me, Senator KASSEBAUM is a real class act. When I came to the U.S. Senate in 1986, Senator KASSEBAUM was the only other woman here. Together we served for 6 years as the only two women in this institution that represents the entire Nation. We were both elected to the U.S. Senate in our own right.

I have tremendous respect for Senator KASSEBAUM and her views on many issues. Senator KASSEBAUM thinks independently in her political and policy decisions. She understands the issues and is not afraid to stand up for what she believes in.

While we may not agree on every issue—no one around here does—we do agree on some pretty important ones. Senator KASSEBAUM favors the legal right to an abortion; she has voted for gun control measures; and she has supported many measures to improve American education. She has demonstrated great courage and conviction.

Second, I salute Senator KASSEBAUM for chairing the full Labor Committee. She is the only female chair of a U.S. Senate committee and she does the job well. I serve on the Labor Committee, and I know first-hand how effective Senator KASSEBAUM can be.

The Labor Committee controls some of the most comprehensive and controversial issues to come before this body. I am talking about welfare reform, health, education, job training and occupational safety—just to name a few. It is not easy. But Senator KASSEBAUM can really rally the troops—Democrat or Republican to make sure that work gets done.

When Senator KASSEBAUM brings a bill to the Senate floor, it is sure to pass. She has a thorough, prudent and reasoned approach to crafting legislation. She gives a great deal of thought to the issues, and she knows how to build consensus.

Together we have fought for the right of women to choice in reproductive health matters. We have fought to keep America healthy, and we have fought for education for this Nation's students.

Finally, as chair of the African Affairs Subcommittee, Senator KASSEBAUM fights for policy that represents our values and respect for human rights.

Senator KASSEBAUM fought apartheid in South Africa. She urged President Reagan to take action against the white-minority government. When he did not, she courageously endorsed sanctions against South Africa.

I want to thank Senator KASSEBAUM for what she has meant to foreign policy and for her commitment to Africa, to the Nation, and to the people of this country.

Senator KASSEBAUM says ''the time has come to pursue other challenges.'' I want to wish her the best in that pursuit, and I know that she will set new standards wherever she goes.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, before discussing today's bad news about the Federal debt, how about ''another go,'' as the British put it, with our quiz.

The question: How many millions of dollars in a trillion? While you are thinking about it, bear in mind that it was the U.S. Congress that ran up the enormous Federal debt that is now about $12 billion shy of $5 trillion.

To be exact, as of the close of business yesterday, November 27, the total Federal debt—down to the penny—stood at $4,988,885,320,472.65. Another depressing figure means that on a per capita basis, every man, woman, and child in America owes $18,937.89.

Mr. President, back to our quiz—how many million in a trillion? There are a million million in a trillion, which means that the Federal Government will shortly owe $5 million million.

Now, who is in favor of balancing the Federal budget?

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

LANDMINES

Mr. LEAHY. Mr. President, I will just speak very briefly. I have spoken many, many times about the dangers of landmines, especially indiscriminate antipersonnel landmines. I was very proud when the Senate went on record by a two-thirds vote supporting my moratorium on our own use of landmines. That is something designed to give the United States the moral leadership in arguing with other nations around the world to eventually ban the use of indiscriminate antipersonnel landmines.

It was, in my 21 years here, one of those rare occasions when people across the ideological spectrum joined together on one major issue, in this case one of the biggest humanitarian issues possible, but also something that could affect defense policies of nations well into the next century.

Earlier today I spoke of the dangers of landmines in the former Yugoslavia.

Mr. President, I ask unanimous consent an article regarding the debate in Congress on landmines, written by Bob Kemper of the Washington Bureau of the Chicago Tribune, dated yesterday, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, Nov. 27, 1995]

CONGRESS DEBATES LAND MINE BAN—110 MILLION MINES PLANTED IN 60 NATIONS SPARK OUTCRY

(By Bob Kemper)

They are trash, the debris of war, like burned-out tanks and bombed-out buildings. But long after peace treaties are signed and soldiers go home, land mines go on killing.

Bosnia may provide the latest example. There are an estimated 6 million anti-armor and anti-personnel mines there, only 1 million of which are mapped, according to the United Nations. UN peacekeepers already have suffered 100 casualties from mines in Bosnia.

Killing or maiming 70 people a day worldwide—26,000 each year—land mines are especially devastating to some of the world's poorest countries, according to the State Department and humanitarian groups. And with 110 million mines still buried in more than 60 countries, an international outcry has risen and is echoing in the halls of Congress.

Led by Rep. Lane Evans (D-Ill.), Congress is taking the extraordinary step of ordering the Pentagon to unilaterally disarm itself of anti-personnel mines, devices that in one form or another have been in the U.S. arsenal since the Civil War.

The House and Senate approved a provision in a foreign operations bill that would give the Pentagon three years to learn to fight without anti-personnel mines.

A one-year moratorium, which later could be extended, then would be placed on the use of anti-personnel mines by American forces, except along international borders or in clearly marked fields.

''The U.S. government ought to set a moral example, to lead the world to see the menace of land mines in a clear light,'' said Evans, who pushed the proposal in the House while Sen. Patrick J. Leahy (D-Vt.) worked the Senate.

No one is blaming the U.S. military for what the State Department dubbed ''the global land mine crisis.'' American forces routinely use ''smart mines'' that self-destruct or turn themselves off after a month or so in the ground. When they do use long-life mines in the field, such as the claymore, the mines are typically removed as the soldiers withdraw.

However, Evans and Leahy say that by disarming its military, America sets an example and can prod other countries to follow suit.

Evans and Leahy used a similar strategy three years ago when they pushed for a moratorium on the U.S. export of mines. Two dozen nations have since followed the U.S. lead in banning or restricting land mine exports. The most recent, France, went further this fall when it announced that it also would stop making mines and destroy those already stockpiled.

Though launched by liberal Democrats, the ban gained new authority on Capitol Hill when pro-defense Democrats, like Virginia Sen. Charles S. Robb, and 25 Republicans, including Senate Majority Leader Bob Dole (R-Kan.), backed it.

''In Vietnam I had a number of my men killed or wounded by various types of mines or booby traps,'' said Robb, who had led a Marine platoon. ''I have visited around the world, in combat areas, literally tens of

thousands of amputees who were victims of mines and lots of those folks are just children, children who were playing.''

Ban proponents say they are singling out the anti-personnel mine because, unlike other implements of war, it keeps killing long after the fighting ends. In Denmark, some areas are still unusable because of mines planted there during World War II.

Many of the 200-plus types of anti-personnel mines manufactured around the world are designed to maim rather than kill because a severely wounded soldier is a bigger drain on enemy logistics and medical resources than a dead soldier. Those same mines, ban proponents argue, are transforming farmers in developing countries into financial and emotional drains on their families and communities.

Still, the Pentagon is fighting to keep the mines.

The Army does not want to give up a weapon on which its field commanders have long relied. Anti-personnel mines are the perfect weapon for defending battlefield positions, protecting economic assets such as power plants, slowing enemy advances or detouring enemy troops into ''killing zones.''

Worried about the effect on the Army, Senate Armed Services Chairman Strom Thurmond (R–S.C.) and Sen. John Warner (R–Va.), a senior member of that panel, plotted with House Republicans to kill the ban. They intended to place a provision in the defense authorization bill giving the Pentagon veto power over the moratorium. However, Warner said, he dropped that plan after being lobbied by Leahy.

''Let him have his shot at it,'' Warner said.

One remaining obstacle is the difficulty congressional leaders have had getting the foreign operations bill to the White House. The House and Senate approved the bill in early November, but remain divided over a separate abortion amendment, preventing the bill from moving forward.

Momentum toward a land mine ban has been building since a year ago, when President Clinton called for the eventual elimination of land mines. Three months later, the United Nations approved a U.S. resolution urging action. Last summer, 280 members of the National Conference of Catholic Bishops meeting in Chicago issued a statement singling out land mines as an indiscriminate killer whose production should cease.

Meanwhile, hundreds of humanitarian groups have spent months—and in some cases years—cataloging land mine atrocities and lobbying for a worldwide ban on the manufacture and use of land mines.

But this fall, the push for a ban fizzled when 42 nations at a UN-sponsored conference on conventional weapons failed to reach agreement.

''I don't think there were two minutes of serious discussion * * * on a total ban on land mines,'' said Stephen Goose, program director of Human Rights Watch's Arms Project and a delegate to the Vienna meeting.

Contrary to Clinton's call for the elimination of mines, many anti-mine groups say, the administration is actually perpetuating the use of mines by pushing for expanded use of ''smart mines'' rather than backing a total ban.

''There is no technological solution'' to the mine problem, Goose said. ''A self-destructing or self-deactivating mine is still an indiscriminate mine. It will still deny the fields to the farmer.''

Evans said he hopes Congress's action will redirect the administration.

''The President is far too cautious,'' Evans said. ''We're encouraging them to be bolder, to demonstrate leadership in encouraging other countries'' to give up mines altogether.

But Robert Sherman, of the U.S. Arms Control and Disarmament Agency, defended the administration's push for advanced mines and other measures short of a ban, including requiring manufacturers to put at least eight grams of metal into each plastic mine so that they can be more easily detected. Such steps are a much more realistic way to protect civilians, he said.

''We know there will not be a total ban in 1996 or 1997 or whenever,'' Sherman said. ''If mines are your concern, you say this is bad. If people are your concern, you say this is good.''

Anti-mine advocates argue that ''smart mines'' often fail to self-destruct, compounding—rather than solving—what is already a daunting problem globally: detection and removal of mines.

Some anti-personnel mines sell for as little as $2 to $3 and hundreds of them can be planted in seconds by special artillery or trucks. In contrast, it takes 100 times longer to remove a mine at a cost of up to $1,000 per mine. And that's if the mine can be found.

Many modern mines are as small as a can of shoe polish and made of plastic. Their only metal part is the size of a thumbtack, making detection by the 1940s-style minesweepers, still in use today, nearly impossible.

Also, for every mine removed, 20 more are planted. In 1993, the UN estimated that 100,000 land mines were found and removed at a cost of $70 million. During that time, 2 million more mines were laid. Even if no more mines were planted after today, experts said, it would take decades and at least $33 billion to clear those still in the ground.

The State Department and the Vietnam Veterans of America, in separate studies, found that mines left behind after wars have taken a devastating toll on civilians. Once fertile fields are now too dangerous to plow. Cattle are killed or maimed. Roads and major utilities hampered by mines make producing and shipping goods difficult.

''Without a clear statement by the U.S. that demonstrates that we are opposed to their use, other nations will continue to sell and deploy them,'' Evans said. ''This legislation, like the moratorium on exports, calls a 'time out' and puts us in the leadership position to challenge other nations to work with us and solve this global crisis.''

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, are we in morning business?

The PRESIDING OFFICER. Yes, sir, we are.

Mr. DORGAN. I thank the Chair.

(The remarks of Mr. DORGAN pertaining to the introduction of S. 1427 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

THE RECONCILIATION BILL

Mr. DORGAN. Mr. President, the current Presiding Officer has spent substantial amounts of time on the floor talking about reconciliation, and he feels passionately and strongly, I believe, that we ought to balance the Federal budget. I share that with him. There is not disagreement in this Chamber about the goal.

I said back home last week—and I have said here—that in my judgment the Republicans deserve some praise for pushing and pushing for a balanced budget. I commend them for that. I do not commend them for the priorities on how they would get there. But, frankly, all of us ought to have more inertia to try to put this country's books in order. And the question is not whether. The question is, How are we going to balance the budget in 7 years?

Negotiations will begin today or tomorrow between the Republicans in the Congress and the Democrats in the White House on how to do that in 7 years. I would simply ask the American people, and my colleagues in the Senate, to think through these priorities some because it is not just let us do it in 7 years and never mind the consequences. It is, let us do it in 7 years. Let us do it the right way, and the smart way for this country. Let us make the right choices for this country's future. It is not the only job in front of us. We should balance the budget. We must, and we will balance the budget. But we also must make sure that those who are disadvantaged in this country are not ignored. We must make sure that our education system works, and we must make sure that our air is clean and our water is clean. Those are other priorities as well.

But in the terms of choosing priorities by which we balance the budget, I would like to once again demonstrate that there is substantial difference and a legitimate difference in what we think will enhance our country's long-term interests. I happen to think that there is nothing more important in this country than investing in building the best education system in the world. I want, when all of this is said and done, for us to be able to say our generation, this group of Americans, made a commitment that we want to have the finest schools in the world. We want our kids to be the best they can be because they went to the best schools in the world. There is a little provision in the reconciliation bill, and the continuing resolution that was passed a week and a half ago, a tiny little issue called Star Schools.

It is a tiny little program, but it is designed to try to lift and enhance those schools that are focusing on math and sciences to bring our children up to international levels in math and sciences, to be competitive. This little Star Schools Program was cut 40 percent—40 percent.

Now, there is a bigger program, a kind of a giant tumor over in the Defense Department called star wars or national missile defense or SDI, depending on what name you want to call it. Because this proposal has a space-

based component, I have heard it called star wars, but nonetheless it is a program that, in its infancy, costs hundreds of millions of dollars a year, and it is going to grow to billions of dollars a year and eventually cost $48 billion. The star wars program was increased in this process this year by 100 percent.

Now, the point is Star Schools you cut by 40 percent, star wars you increase by 100 percent. The question is, What do you think is worthy of a star here, schools or corporations that want to build a $48 billion star wars program, because that is what this is. This is about special interests that want to build a weapons system the Secretary of Defense did not order, did not ask for, and says he does not need. The priority is clear: Star Schools or star wars. Cut Star Schools 40 percent, increase star wars 100 percent. If you think that enhances America's future, then that is what you do. I do not think it enhances America's future. I think it is exactly the wrong choice.

I use that example as I have before simply to say the question is not whether, but how, do we balance the budget.

Two other tiny little issues. I offered an amendment, and it was defeated on a party line vote, regrettably. It is an issue that I think also describes the how in terms of what we believe in. We have in the Tax Code in this country a perverse, insidious, little tax incentive that says, move your plant overseas. Close your plant in America, move it overseas to a tax haven country, and we will give you a tax break. I offered an amendment that said let us reduce the deficit by getting rid of this insidious little tax break that says move your plant and jobs overseas and we will give you a break. I lost on a party line vote.

In terms of priorities, the priority, it seems to me, in balancing the budget is to do what works to help create jobs and opportunities in our country. How better to help create jobs and opportunities than to shut off the faucet on a tax break that encourages plants to shut down in America and relocate overseas and take the jobs that used to be U.S. jobs and turn them into jobs in a tax haven country.

That is a priority we ought to pursue. Again, it is not whether, it is how do you balance the budget. Let us balance the budget by getting rid of this little tax break that is wrong for our country, that weakens our country, that says let us move jobs out of our country. That does not make any sense to me.

The smart choice is, yes, Star Schools, education, investment in the future. It is, yes, jobs, shutting off tax breaks that persuade people to move out of the country, and it also is, yes, choosing between a tax cut for the very wealthiest of Americans and a cut in Medicare reimbursement for some of the poorest of Americans.

That amendment also was offered, and I hope that will be reconsidered in a reconciliation conference in the next week or two. What we said was very simple. Those of the upper income strata in this country have done very, very well. They have garnered a substantial portion of the income, regrettably, at the expense of the bottom portion of the income earners in our country. What we said with the amendment was very simple. We said, let us at least limit the tax break to incomes of a quarter of a million dollars or less, and then let us use the savings from that limitation to see if we cannot reduce the cut in Medicare that is going to affect some low-income elderly folks.

Once again, we lost, but again it is choices—what is important and what is not. Is it important to give the wealthiest people in our country a significant tax cut? Gee, I do not think so. It seems to me, if you look at the statistics, you will find that they have done very, very well, much better, with income growth that is substantial.

In fact, the top percent in our country have seen income growths on a real basis of something like 70 percent real income growth in a period of a decade, and the bottom 60 percent now sit down for supper at night at the family table and talk about their lot in life. What they discover is that they are working harder and earning less than 20 years ago when you adjust for inflation.

Our point is that we do not think it makes any sense to give big tax cuts to those at the upper one-half of 1 percent of the income earners at the same time that we are saying we cannot afford Medicare for some of the poorest of the elderly. And, again, it is a question of priorities.

I think that we are now on a track in the next week or two with respect to the reconciliation bill that will be constructive for this country.

I mentioned these three areas only because I think there are differences in priorities that are legitimate differences. On the other hand, it seems to me if Republicans and Democrats can sit down together in the next couple of weeks and if the President can sit down with Congress, out of the glare of the spotlights, a lot of agreement can result, and we can in fact balance this country's budget and put this country on solid financial footing for the years ahead.

This country, it seems to me, will be advantaged in a world in which we see increasingly competitive, shrewd, tough trade allies and others if we find some way to work more together, and I do not think that is an impossible circumstance. I know there is a lot of controversy floating around, and I get involved in it from time to time. I hear what the Speaker of the House says, and I may respond. But the fact is that with all of the controversy which circulates, we are still all on the same team. Our interest is the American economy. Our interest is American jobs and opportunities in the future.

It seems to me, even though we may belong to different political parties, our country will be advantaged if we can find a thoughtful, sober, reflective way of choosing the right priorities that all of us think will move this country ahead and build a better economy and a better future.

My hope and my expectation is that maybe, just maybe, as we approach the Christmas season, more of a spirit of cooperativeness will exist. We put this question behind us of whether, and the question now is how to balance the budget. And although these are not easy questions to answer, I think people of good will can get together and do what is right for this country.

Mr. President, I see no other speakers waiting. I yield the floor, and I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered.

Mr. THOMAS. I ask unanimous consent that I may speak for a few minutes in morning business.

The PRESIDING OFFICER. The Senator from Wyoming.

BALANCING THE BUDGET

Mr. THOMAS. Mr. President, the Senator from North Dakota spoke just a few minutes ago about balancing the budget. And I was interested and pleased with his remarks. Certainly I agree with him that probably one of the most important issues that we have before us, and have had for this entire year, is the notion of becoming financially and fiscally responsible in this body and in this country, and doing so by balancing the budget.

It seems to me that there is a great deal involved with balancing the budget. It is more than a function of arithmetic; it is a function of determining the direction we take in this Government.

It is a function of dealing with spending. There are a number of ways to balance the budget. One of them, which President Clinton choose last year, was to raise taxes and continue to spend, and I suppose you could do that. You could balance the budget by continuing to spend and increasing taxes.

I think that is not what the American people said in 1994. They said we have too much Government, the Government is too large, it costs too much, and we need to balance the budget, but we need to balance the budget by reducing the growth in spending. Therein lies one of the differences.

The Senator said we ought to balance the budget. I agree with that. We have not done it in 30 years. It is fairly easy to say we ought to balance the budget. The evidence is that it is very easy to say that and more difficult to do it.

He said we ought to balance the budget in the right way. I agree. I have the right way; he does not have the right way. That is the problem. The right way hardly gets to it. But I do agree we need to get together. There are differences—there are significant differences—in how we do it, and I think it is our responsibility, as trustees for this Government, to find a way to get the kind of agreement that is necessary to balance the budget. We should do that, and we should do it soon.

I think we made great advances the week before last by getting an agreement with the White House, getting an agreement in this Congress that we will balance the budget in 7 years, using real figures, CBO figures.

There are some other words there: We are going to protect the environment, protect Medicare, protect education. I do not know quite what that means. We may have a different view of what ''protect'' means. None of us wants to do away with those things.

It seems to me one of the real challenges we have, as we move forward with this idea of balancing the budget, which we must do, is we need to start dealing with some facts. It is too easy to roll over into scare tactics in the political response by saying, ''Yes, I'm going to protect Medicare.'' The fact is, you have to make some changes in Medicare if you want it to continue. If you want to have a health program for the elderly over time, you cannot continue to do what we have been doing. So you have to change it. But it is too easy to go to the country and say, ''Those Republicans want to do away with Medicare.'' It is not true. It is just not true.

''We are going to do away with education.'' Do you know how much the Federal Government contributes to elementary and secondary education? About 5 percent of the total spending. The Senator from New Mexico, who is more knowledgeable than anyone else about the budget, indicated that this budget would have reduced in his State Federal aid by six-tenths of 1 percent, and yet here we are going to gut education.

I was pleased to hear that the Senator wants to balance the budget. The unfortunate part is we hear that all the time and then we go on for another 30 minutes indicating why we cannot do it. The time has come. We have come to the snubbing post. It is time to make the decisions, and I think we will.

I wish we would have passed a balanced budget amendment to the Constitution. The principal sponsor and advocate is right here on the floor, the Senator from Illinois. I wish we had done that for the discipline that is involved in doing it. It would have said, ''Yes, you can argue about how it is done, but you are going to balance the budget because that is the Constitution.'' It is in the Constitution in my State of Wyoming, and we do it. We do it. We do not talk about it, we do it.

So, Mr. President, I look forward to that. I hope we get with the program in the next 3 weeks. We need to do that. We need to pass the appropriations bills. We need to get this balanced budget bill out. We do not need another delay of Government on the 15th of December. We need to get at the task, and I hope that we do it very soon.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I confess I just got in on the tail end of Senator THOMAS' remarks. From what I heard, I agree. I hope we can move quickly, and it illustrates why Senator THOMAS is going to be an asset to the Senate. I was told by a House Member from Illinois, Congressman DICK DURBIN, he said, ''You are really going to like the new Senator from Wyoming.'' I hope I do not get him in trouble in Wyoming saying this now, but I have found that to be the case.

BOSNIA

Mr. SIMON. Mr. President, we have been discussing the Bosnian situation. I was critical of President Bush for not responding right away. I was critical of Bill Clinton when he became President for not responding. I joined those who voted for lifting the arms blockade. But I believe the President is acting in the national interest now, and we have to recognize the great threat to the future of our country in terms of security is no longer nuclear weapons, I am happy to say, it is instability. We are not going to get stability in Bosnia without United States leadership and involvement.

To the credit of the President, Warren Christopher and others, there is a peace agreement, which evolved in Dayton, OH, the Midwest of the United States, and I think it is imperative that we move ahead.

Last night, I was reading the Weekly Standard, Irving Crystal's new magazine. I try to get a diverse readership, and I hope it will not shock him that I am reading his publication. I ask unanimous consent to have printed in the RECORD the lead editorial.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Weekly Standard, Dec. 4, 1995]

BOSNIA: SUPPORT THE PRESIDENT

Bosnian peace diplomacy, brokered by the United States, has passed a significant checkpoint in Dayton, Ohio. Now what? Administration advocates of the new accord oversell its merits. Secretary of State Christopher proclaims the agreement ''a victory for all those who believe in a multiethnic democracy in Bosnia-Herzegovina.'' Another U.S. official calls it a ''fantastic deal'' for the Bosnian Muslims.

That's saying too much. U.S. policy has never been devoted to reversing all Serbian military encroachments on Bosnian government-held territory. The pact signed in Dayton ratifies most of those Serbian landgrabs—and, in effect, the demonically ethnicized regional politics that impelled them. The country is to be divided along ethnic lines. Its new central government begins life enfeebled. The agreement's free-movement and resettlement promises appear fanciful.

But what the peace plan can possibly accomplish—a pacification of Balkan brutality sufficiently complete and lengthy to take root—is good enough. And better than much of the surprisingly strident, even cavalier, Republican opposition to the plan allows.

Bob Dole and Newt Gingrich expect the White House to request a non-binding resolution of congressional endorsement for the U.S. peacekeeping deployment required by the Dayton accord. Both men have their legitimate questions about that operation's details and contingencies, and about Balkan diplomacy's ultimate prospects. But they are holding open their options, and seem seriously concerned to maintain, as best they can, a bipartisan and muscular American foreign policy under presidential leadership.

Not so some of their vocal Republican colleagues. Phil Gramm, revealing previously undetected powers of international prognostication, somehow just knows that an American troop presence in Bosnia can only bring total disaster. He has ''no confidence'' in the president, whom he bitterly mocks with quotes reprinted in every American newspaper. Aside from Dick Lugar, measured and diplomatic as always, the rest of the GOP's presidential contenders are quick to agree. All firmly oppose Bosnian troop deployment. The Republican House of Representatives has already twice voted to defund the troops if it is not first granted the power to block them outright.

If cooler heads are to prevail, they had better open their mouths fast. It is obviously true, as Alan Keyes pointed out in the Florida presidential campaign debate a couple of weeks back, that for Bosnia and the rest of the world ''there is a God'' and U.S. military forces ''are not Him.'' It is also true that there is a serious case against the troop deployment. Charles Krauthammer makes that case elsewhere in these pages.

But he does so while candidly conceding the damage such a last-minute withdrawal would do—first to American international credibility generally, and also to the NATO-led European security arrangements in which our national interest is inextricably intertwined. We may not be God, but where global security arrangements are concerned, we are the closest thing there is. And the United States would be a niggardly superpower indeed were we to withhold our mastery and muscle when they are asked for and widely expected to help halt horrifying bloodshed in Europe.

We are in Bosnia already. A high-profile regional peace accord, husbanded by American diplomacy, concluded on American soil, and announced in the Rose Garden of the White House, calls for us to go in deeper. To prevent it, at this point, Republicans would be forced to provoke a presidential foreign policy humiliation the likes of which probably have not been seen since the failure of Woodrow Wilson's League of Nations. And they would inescapably signal, in the process, that America is badly confused about its global status. And that an American president can no longer reliably serve as representative of his nation before the world.

Such a drastic diminution of presidential authority is dangerous. The Bosnia operation is a judgment call. The strongest case made by Bosnia doves still can't make it anything more than a judgment call. And in

foreign policy judgment calls, prudence dictates a prejudice for presidential prerogative. Mr. Clinton cannot make that argument all by himself. He can and should, as George Bush did before him during the Kuwait crisis, make a strong appeal to the American people that U.S. national interests are at stake—and that he has a reasonable strategy to fulfill them.

Congress, for its part, should hold its hearings and delineate whatever conditions on deployment it believes appropriate. But while they're at it, Republicans should remember why it is they have spent the past 15 years defending presidential leadership in foreign affairs. At the end of the day, the Republican Congress should support the president on Bosnia.

Mr. SIMON. The lead editorial, Mr. President, says: ''Bosnia: Support the President.'' This is a magazine, as the Presiding Officer knows, that is primarily oriented to people of conservative view and primarily to Republicans. The final paragraph says:

Congress, for its part, should hold its hearings and delineate whatever conditions on deployment it believes appropriate. But while they're at it, Republicans should remember why it is they have spent the past 15 years defending Presidential leadership in foreign affairs. At the end of the day, the Republican Congress should support the President on Bosnia.

I was pleased last night, Mr. President, when I heard the interview on CBS, Dan Rather's interview with Senator DOLE. Senator DOLE, obviously, could benefit politically right now by denouncing President Clinton and the move that was made. Senator DOLE, to his credit, did not take that posture. It was a statesmanlike response.

I think insofar as possible—obviously, we all have to make judgments on these things, and I respect those whose judgments differ from me on this—but insofar as possible, we should have bipartisan foreign policy. That does require the President to work with Congress and, frankly, I think more than has been done up to this point by this administration.

But the lessons from Woodrow Wilson are that the executive branch has to work with Congress, but the other lesson is a lesson from right after World War II when we had a Democratic President and a Republican Congress, and President Truman, through General Marshall at the Harvard commencement, suggested the Marshall plan, which we look back upon with great pride.

After that was announced, the first Gallup Poll showed 14 percent of the American public supporting the Marshall plan, a plan that ultimately saved western Europe from communism and helped to bring about the demise of communism in Europe.

In the U.S. Senate there was a Republican Senator by the name of Arthur Vandenberg. The Presiding Officer is nodding as though he remembers that. He is too young to remember when Arthur Vandenberg was a member of this body, but I remember it well. Arthur Vandenberg did not take advantage of the situation but worked with the President for the best interests of this Nation and the best interests of the world.

I think that is what we have to do at this point, Mr. President. I hope we will. We are going to differ and differ strongly on this thing. That is the way it should be. I hope it will not be on a partisan basis.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:29 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Ms. SNOWE).

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

INTERSTATE COMMERCE COMMISSION SUNSET ACT

Mr. PRESSLER. Madam President, I ask unanimous consent that the Senate now turn to the consideration of S. 1396, the Interstate Commerce Commission Sunset Act of 1995.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1396) to amend title 49, United States Code, to provide for the regulation of surface transportation.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill. which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Interstate Commerce Commission Sunset Act of 1995''.

SEC. 2. AMENDMENT OF TITLE 49.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. TABLE OF SECTIONS.

The table of sections for this Act is as follows:

Section 1. Short title 245
Sec. 2. Amendment of title 49 245
Sec. 3. Table of sections 245
TITLE I—TERMINATION OF THE INTERSTATE COMMERCE COMMISSION AND FEDERAL MARITIME COMMISSION; REPEAL OF OBSOLETE AND UNNECESSARY PROVISIONS OF LAW 251
SUBTITLE A—TERMINATIONS 251
Sec. 101. Agency terminations 251
Sec. 102. Savings provisions 252
Sec. 103. References to the ICC in other laws 254
Sec. 104. Transfer of functions 255
Sec. 105. References to the FMC in other laws 256
SUBTITLE B—REPEAL OF OBSOLETE, ETC., PROVISIONS 256
Sec. 121. Repeal of provisions 256
Sec. 122. Coverage of certain entities under other, unrelated Acts not affected 267
TITLE II—INTERMODAL SURFACE TRANSPORTATION BOARD 267
SUBTITLE A—ORGANIZATION 267
Sec. 201. Amendment to subchapter I 267
''SUBCHAPTER I—ESTABLISHMENT 268
''§ 10301. Establishment of Transportation Board 268
''§ 10302. Functions 272
''§ 10303. Administrative provisions 272
''§ 10304. Annual report 274
Sec. 202. Administrative support .. 275
Sec. 203. Reorganization 275
Sec. 204. Transition plan for Federal Maritime Commission functions. 275
SUBTITLE B—ADMINISTRATIVE 276
Sec. 211. Powers 276
Sec. 212. Commission action 277
Sec. 213. Service of notice in Commission proceedings 278
Sec. 214. Service of process in court proceedings 280
Sec. 215. Study on the authority to collect charges 280
Sec. 216. Federal Highway Administration rulemaking 281
TITLE III—RAIL AND PIPELINE TRANSPORTATION 281
Sec. 301. General changes in references to Commission, etc 281
Sec. 302. Rail transportation policy 283
Sec. 303. Definitions 283
Sec. 304. General jurisdiction 284
Sec. 305. Railroad and water transportation connections and rates 285
Sec. 306. Authority to exempt rail carrier and motor carrier transportation 285
Sec. 307. Standards for rates, classifications, etc. 287
Sec. 308. Standards for rates for rail carriers 288
Sec. 309. Authority for carriers to establish rates, classifications, etc 289
Sec. 310. Authority for carriers to establish through routes 290
Sec. 311. Authority and criteria for prescribed rates, classifications, etc. 290
Sec. 312. Authority for prescribed through routes, joint classifications, etc. 291
Sec. 313. Antitrust exemption for rate agreements 292
Sec. 314. Investigation and suspension of new rail rates, etc. ... 293
Sec. 315. Zone of rail carrier rate flexibility 294
Sec. 316. Investigation and suspension of new pipeline carrier rates, etc. 297

Sec. 317. Determination of market dominance 298
Sec. 318. Contracts 300
Sec. 319. Government traffic 302
Sec. 320. Rates and liability based on value 302
Sec. 321. Prohibitions against discrimination by common carriers 302
Sec. 322. Facilities for interchange of traffic 303
Sec. 323. Liability for payment of rates 303
Sec. 324. Continuous carriage of freight 304
Sec. 325. Transportation services or facilities furnished by shipper 304
Sec. 326. Demurrage charges 305
Sec. 327. Transportation prohibited without tariff 305
''§10761. Transportation prohibited without tariff 305
Sec. 328. General elimination of tariff filing requirements 306
''§10762. General elimination of tariff filing requirements 306
Sec. 329. Designation of certain routes 308
Sec. 330. Authorizing construction and operation of railroad lines 308
Sec. 331. Authorizing action to provide facilities 309
Sec. 332. Authorizing abandonment and discontinuance 309
Sec. 333. Filing and procedure for applications to abandon or discontinue 309
Sec. 334. Exceptions 310
Sec. 335. Railroad development 310
Sec. 336. Providing transportation, service, and rates 310
''§11101. Providing transportation, service, and rates 311
Sec. 337. Use of terminal facilities 312
Sec. 338. Switch connections and tracks 312
Sec. 339. Criteria 312
Sec. 340. Rerouting traffic on failure of rail carrier to serve public 313
Sec. 341. Directed rail transportation 313
Sec. 342. War emergencies; embargoes 313
Sec. 343. Definitions for subchapter III 313
''§11141. Definitions 313
Sec. 344. Depreciation charges 314
Sec. 345. Records, etc. 314
Sec. 346. Reports by carriers, lessors, and associations 314
Sec. 347. Accounting and cost reporting 315
Sec. 348. Securities, obligations, and liabilities 315
Sec. 349. Equipment trusts 316
Sec. 350. Restrictions on officers and directors 317
Sec. 351. Limitation on pooling and division of transportation or earnings 317
Sec. 352. Consolidation, merger, and acquisition of control 318
Sec. 353. General procedure and conditions of approval for consolidation, etc. 318
Sec. 354. Rail carrier procedure for consolidation, etc. 319
Sec. 355. Employee protective arrangements 320
Sec. 356. Authority over noncarrier acquirers 320
Sec. 357. Authority over intrastate transportation 320
Sec. 358. Tax discrimination against rail transportation property 321
Sec. 359. Withholding State and local income tax by certain carriers 321
Sec. 360. General authority for enforcement, investigations, etc. .. 321
Sec. 361. Enforcement 322
Sec. 362. Attorney General enforcement 323
Sec. 363. Rights and remedies 323
Sec. 364. Limitation on actions 324
Sec. 365. Liability of common carriers under receipts and bills of lading 325
Sec. 366. Liability when property is delivered in violation of routing instructions 326
Sec. 367. General civil penalties ... 326
Sec. 368. Civil penalty for accepting rebates from common carrier 327
Sec. 369. Rate, discrimination, and tariff violations 327
Sec. 370. Additional rate and discrimination violations 327
Sec. 371. Interference with railroad car supply 328
Sec. 372. Record keeping and reporting violations 328
Sec. 373. Unlawful disclosure of information 328
Sec. 374. Consolidation, merger, and acquisition of control 329
Sec. 375. General criminal penalty 329
Sec. 376. Financial assistance for State projects 329
Sec. 377. Status of AMTRAK and applicable laws 329
Sec. 378. Rail-shipper Transportation Advisory Council 330
''SUBCHAPTER VI. RAIL—SHIPPER TRANSPORTATION ADVISORY COUNCIL 330
''§10391. Rail—Shipper Transportation Advisory Council 330
TITLE IV—MOTOR CARRIER, WATER CARRIER, BROKER, AND FREIGHT FORWARDER TRANSPORTATION 337
SUBTITLE A—ADDITION OF PART B 337
Sec. 401. Enactment of part B of subtitle IV, title 49, United States Code 337
''PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS 337
''CHAPTER 131—GENERAL PROVISIONS 337
''§13101. Transportation policy 337
''§13102. Definitions 340
''§13103. Remedies are cumulative 347
''CHAPTER 133—ADMINISTRATIVE PROVISIONS 347
''§13301. Powers 347
''§13302. Intervention 350
''§13303. Service of notice in proceedings under this part 350
''§13304. Service of process in court proceedings 351
''CHAPTER 135—JURISDICTION 352
''SUBCHAPTER I—MOTOR CARRIER TRANSPORTATION 352
''§13501. General jurisdiction 352
''§13502. Exempt transportation between Alaska and other States 353
''§13503. Exempt motor vehicle transportation in terminal areas 353
''§13504. Exempt motor carrier transportation entirely in one State 355
''SUBCHAPTER II—WATER CARRIER TRANSPORTATION 356
''§13521. General jurisdiction 356
''SUBCHAPTER III—FREIGHT FORWARDER SERVICE 357
''§13531. General jurisdiction 357
''SUBCHAPTER IV—AUTHORITY TO EXEMPT 358
''§13541. Authority to exempt transportation or services 358
''CHAPTER 137—RATES AND THROUGH ROUTES 360
''§13701. Requirements for reasonable rates, classifications, through routes, rules, and practices for certain transportation 360
''§13702. Tariff requirement for certain transportation 361
''§13703. Certain collective activities; exemption from antitrust laws 364
''§13704. Household goods rates—estimates; guarantees of service 369
''§13705. Requirements for through routes among motor carriers of passengers 370
''§13706. Liability for payment of rates 371
''§13707. Billing and collecting practices 372
''§13708. Procedures for resolving claims involving unfiled, negotiated transportation rates 373
''§13709. Additional motor carrier undercharge provisions 380
''§13710. Alternative procedure for resolving undercharge disputes 382
''§13711. Government traffic 385
''§13712. Food and grocery transportation 386
''CHAPTER 139—REGISTRATION 386
''§13901. Requirement for registration 386
''§13902. Registration of motor carriers 386
''§13903. Registration of freight forwarders 396
''§13904. Registration of motor carrier brokers 396
''§13905. Effective periods of registration 397
''§13906. Security of motor carriers, brokers, and freight forwarders 399
''§13907. Household goods agents 403
''§13908. Registration and other reforms 406
''CHAPTER 141—OPERATIONS OF CARRIERS 407
''SUBCHAPTER I—GENERAL REQUIREMENTS 407
''§14101. Providing transportation and service 407
''§14102. Leased motor vehicles 408
''§14103. Loading and unloading motor vehicles 410
''§14104. Household goods carrier operations 411
''SUBCHAPTER II—REPORTS AND RECORDS 413
''§14121. Definitions 413
''§14122. Records: form; inspection; preservation 414
''§14123. Reports by carriers, brokers, and associations 414
''CHAPTER 143—FINANCE 416
''§14301. Security interests in certain motor vehicles 416
''§14302. Pooling and division of transportation or earnings 418
''§14303. Consolidation, merger, and acquisition of control of motor carriers of passengers 422
''CHAPTER 145—FEDERAL-STATE RELATIONS 425
''§14501. Federal authority over intrastate transportation 425
''§14502. Tax discrimination against motor carrier transportation property 429
''§14503. Withholding State and local income tax by certain carriers 432
''§14504. State tax 434
''§14505. Single State registration system 434
''CHAPTER 147—ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES 438
''§14701. General authority 438
''§14702. Enforcement by the regulatory authority 440
''§14703. Enforcement by the attorney general 441
''§14704. Rights and remedies of persons injured by carriers or brokers 441

''§ 14705. Limitation on actions by and against carriers 444
''§ 14706. Liability of carriers under receipts and bills of lading 446
''§ 14707. Private enforcement of registration requirement 451
''§ 14708. Dispute settlement program for household goods carriers 452
''§ 14709. Tariff reconciliation rules for motor carriers of property 456
''CHAPTER 149—CIVIL AND CRIMINAL PENALTIES 457
''§ 14901. General civil penalties ... 457
''§ 14902. Civil penalty for accepting rebates from carrier 460
''§ 14903. Tariff violations 461
''§ 14904. Additional rate violations 462
''§ 14905. Penalties for violations of rules relating to loading and unloading motor vehicles 463
''§ 14906. Evasion of regulation of carriers and brokers 464
''§ 14907. Record keeping and reporting violations 464
''§ 14908. Unlawful disclosure of information 465
''§ 14909. Disobedience to subpenas 466
''§ 14910. General criminal penalty when specific penalty not provided 466
''§ 14911. Punishment of corporation for violations committed by certain individuals 467
''§ 14912. Weight-bumping in household goods transportation 467
''§ 14913. Conclusiveness of rates in certain prosecutions 468
SUBTITLE B—MOTOR CARRIER REGISTRATION AND INSURANCE REQUIREMENTS 468
Sec. 451. Amendment of section 31102 468
Sec. 452. Amendment of section 31138 469
Sec. 453. Self-insurance rules 470
Sec. 454. Safety fitness of owners and operators 470
TITLE V—AMENDMENTS TO OTHER LAWS 471
Sec. 501. Federal Election Campaign Act of 1971 471
Sec. 502. Agricultural Adjustment Act of 1938 472
Sec. 503. Agricultural Marketing Act of 1946 472
Sec. 504. Animal Welfare Act 472
Sec. 505. Title 11, United States Code 473
Sec. 506. Clayton Act 473
Sec. 507. Consumer Credit Protection Act 474
Sec. 508. National Trails System Act 475
Sec. 509. Title 18, United States Code 476
Sec. 510. Internal Revenue Code of 1986 476
Sec. 511. Title 28, United States Code 477
Sec. 512. Migrant and Seasonal Agricultural Worker Protection Act 479
Sec. 513. Title 39, United States Code 479
Sec. 514. Energy Policy Act of 1992 481
Sec. 515. Railway Labor Act 481
Sec. 516. Railroad Retirement Act of 1974 481
Sec. 517. Railroad Unemployment Insurance Act 482
Sec. 518. Emergency Rail Services Act of 1970 483
Sec. 519. Regional Rail Reorganization Act of 1973 483
Sec. 520. Railroad Revitalization and Regulatory Reform Act of 1976 483
Sec. 521. Alaska Railroad Transfer Act of 1982 483
Sec. 522. Merchant Marine Act, 1920 484
Sec. 523. Service Contract Act of 1965 484
Sec. 524. Federal Aviation Administration Authorization Act of 1994 485
TITLE VI—AUTHORIZATION 485
Sec. 601. Authorization of appropriations 485
TITLE VII—EFFECTIVE DATE 486
Sec. 701. Effective Date 486

TITLE I—TERMINATION OF THE INTERSTATE COMMERCE COMMISSION AND FEDERAL MARITIME COMMISSION; REPEAL OF OBSOLETE AND UNNECESSARY PROVISIONS OF LAW

Subtitle A—Terminations

SEC. 101. AGENCY TERMINATIONS.

(a) INTERSTATE COMMERCE COMMISSION.—Upon the transfer of functions under this Act to the Intermodal Surface Transportation Board and to the Secretary of Transportation, the Interstate Commerce Commission shall terminate.

(b) FEDERAL MARITIME COMMISSION.—Effective January 1, 1997, the Federal Maritime Commission shall terminate.

SEC. 102. SAVINGS PROVISIONS.

(a) IN GENERAL.—All orders, determinations, rules, regulations, licenses, and privileges which are in effect at the time this Act takes effect, shall continue in effect according to their terms, insofar as they involve regulatory functions to be retained by this Act, until modified, terminated, superseded, set aside, or revoked in accordance with law by the Transportation Board (to the extent they involve the functions transferred to the Intermodal Surface Transportation Board under this Act) or by the Secretary (to the extent they involve functions transferred to the Secretary under this Act), or by a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS; APPLICATIONS.—

(1) The provisions of this Act shall not affect any proceedings or any application for any license pending before the Interstate Commerce Commission at the time this Act takes effect, insofar as those functions are retained and transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Transportation Board and the Secretary are authorized to provide for the orderly transfer of pending proceedings from the Interstate Commerce Commission.

(c) ACTIONS IN LAW COMMENCED BEFORE ENACTMENT.—Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) CONTINUANCE OF ACTIONS AGAINST OFFICERS.—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Interstate Commerce Commission shall abate by reason of the enactment of this Act. No cause of action by or against the Interstate Commerce Commission, or by or against any officer thereof in his official capacity, shall abate by reason of enactment of this Act.

(e) SUBSTITUTION OF TRANSPORTATION BOARD AS PARTY.—Any suit by or against the Interstate Commerce Commission begun before enactment of this Act shall be continued, insofar as it involves a function retained and transferred under this Act, with the Transportation Board (to the extent the suit involves functions transferred to the Transportation Board under this Act) or the Secretary (to the extent the suit involves functions transferred to the Secretary under this Act) substituted for the Commission.

SEC. 103. REFERENCES TO THE ICC IN OTHER LAWS.

(a) FUNCTIONS.—With respect to any functions transferred by this Act and exercised after the effective date of the Interstate Commerce Commission Sunset Act of 1995, reference in any other Federal law to the Interstate Commerce Commission shall be deemed to refer to—

(1) the Intermodal Surface Transportation Board, insofar as it involves functions transferred to the Transportation Board by this Act; and

(2) the Secretary of Transportation, insofar as it involves functions transferred to the Secretary by this Act.

(b) OTHER REFERENCES.—Any other reference in any law, regulation, official publication, or other document to the Interstate Commerce Commission as an agency of the United States Government shall be treated as a reference to the Transportation Board.

SEC. 104. TRANSFER OF FUNCTIONS.

(a) TO TRANSPORTATION BOARD.—Except as otherwise provided in this Act and the amendments made by this Act, those personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Transportation Board by this Act shall be transferred to the Transportation Board for use in connection with the functions transferred, and unexpended balances of appropriations, allocations, and other funds of the Interstate Commerce Commission shall also be transferred to the Transportation Board.

(b) TO SECRETARY.—Except as otherwise provided in this Act and the amendments made by this Act, those personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Secretary by this Act shall be transferred to the Secretary for use in connection with the functions transferred.

SEC. 105. REFERENCES TO THE FMC IN OTHER LAWS.

Effective January 1, 1997, reference in any other Federal law to the Federal Maritime Commission shall be deemed to refer to the Transportation Board.

Subtitle B—Repeal of Obsolete, Etc., Provisions

SEC. 121. REPEAL OF PROVISIONS.

The following provisions are repealed:

(1) Section 10101 (relating to transportation policy) and the item relating thereto in the table of sections of chapter 101 are repealed.

(2) Section 10322 (relating to Commission action and appellate procedure in nonrail proceedings) and the item relating thereto in the table of sections of chapter 103 are repealed.

(3) Section 10326 (relating to limitations in rulemaking proceedings related to rail carriers) and the item relating thereto in the table of sections of chapter 103 are repealed.

(4) Section 10327 (relating to Commission action and appellate procedure in rail carrier proceedings) and the item relating thereto in the table of sections of chapter 103 are repealed.

(5) Section 10328 (relating to intervention) and the item relating thereto in the table of sections of chapter 103 are repealed.

(6) Subchapter III of chapter 103 (relating to joint boards) and the items relating thereto in the table of sections of such chapter are repealed.

(7)(A) Subchapter IV of chapter 103 (relating to Rail Services Planning Office) and the items relating thereto in the table of sections of such chapter are repealed.

(B) Section 24505(b) of title 49, United States Code, is amended to read as follows:

''(b) OFFER REQUIREMENTS.—A commuter authority making an offer under subsection (a)(2) of this section shall show that it has obtained access to all rail property necessary to provide the additional commuter rail passenger transportation.''.

(8) Subchapter V of chapter 103 (relating to Office of Rail Public Counsel) and the items relating thereto in the table of sections of such chapter are repealed.

(9) Section 10502 (relating to express carrier transportation) and the item relating thereto in the table of sections of chapter 105 are repealed.

(10) Section 10504 (relating to exempt rail mass transportation) and the item relating thereto in the table of sections of such chapter are repealed.

(11) Subchapter II, III, and IV of chapter 105 (relating to freight forwarder service) and the items relating thereto in the table of sections of such chapter are repealed.

(12) Section 10705a (relating to joint rate surcharges and cancellations) and the item relating thereto in the table of sections of chapter 107 are repealed.

(13) Section 10710 (relating to elimination of discrimination against recyclable materials) and the item relating thereto in the table of sections of chapter 107 are repealed.

(14) Section 10711 (relating to effect of certain sections on rail rates and practices) and the item relating thereto in the table of sections of chapter 107 are repealed.

(15) Section 10712 (relating to inflation-based rate increases) and the item relating thereto in the table of sections of chapter 107 are repealed.

(16) Subchapter II (relating to special circumstances) of chapter 107 (except for sections 10721 and 10730) and the items relating thereto in the table of sections of chapter 107 (except for the subchapter caption and the items relating to sections 10721 and 10730) are repealed.

(17) Section 10743 (relating to payment of rates) and the item relating thereto in the table of sections of chapter 107 are repealed.

(18) Section 10746 (relating to transportation of commodities manufactured or produced by a rail carrier) and the item relating thereto in the table of sections of chapter 107 are repealed.

(19) Section 10748 (relating to transportation of livestock by rail carrier) and the item relating thereto in the table of sections of chapter 107 are repealed.

(20) Section 10749 (relating to exchange of services and limitation on use of common carriers by household goods freight forwarders) and the item relating thereto in the table of sections of chapter 107 are repealed.

(21) Section 10751 (relating to business entertainment expenses) and the item relating thereto in the table of sections of chapter 107 are repealed.

(22) Section 10764 (relating to arrangements between carriers) and the item relating thereto in the table of sections of chapter 107 are repealed.

(23) Section 10765 (relating to water transportation under arrangements with certain other carriers) and the item relating thereto in the table of sections of chapter 107 are repealed.

(24) Section 10766 (relating to freight forwarder traffic agreements) and the item relating thereto in the table of sections of chapter 107 are repealed.

(25) Section 10767 (relating to billing and collecting practices) and the item relating thereto in the table of sections of chapter 107 are repealed.

(26) Subchapter V of chapter 107 (relating to valuation of property) and the items relating thereto in the table of sections of chapter 107 are repealed.

(27)(A) Section 10908 (relating to discontinuing or changing interstate train or ferry transportation) and the item relating thereto in the table of sections of chapter 109 are repealed.

(B) Subsection (d) of section 24705 of title 49, United States Code, is repealed.

(28) Section 10909 (relating to discontinuing or changing train or ferry transportation in one State) and the item relating thereto in the table of sections of chapter 109 are repealed.

(29) Subchapter II (relating to other carriers and motor carrier brokers) of chapter 109 and the items relating thereto in the table of sections of chapter 109 are repealed.

(30) Section 11102 (relating to classification of carriers) and the item relating thereto in the table of sections of chapter 111 are repealed.

(31) Section 11105 (relating to protective services) and the item relating thereto in the table of sections of chapter 111 are repealed.

(32) Section 11106 (relating to identification of motor vehicles) and the item relating thereto in the table of sections of chapter 111 are repealed.

(33) Section 11107 (relating to leased motor vehicles) and the item relating thereto in the table of sections of chapter 111 are repealed.

(34) Section 11108 (relating to water carriers subject to unreasonable discrimination in foreign transportation) and the item relating thereto in the table of sections of chapter 111 are repealed.

(35) Section 11109 (relating to loading and unloading motor vehicles) and the item relating thereto in the table of sections of chapter 111 are repealed.

(36) Section 11110 (relating to household goods carrier operations) and the item relating thereto in the table of sections of chapter 111 are repealed.

(37) Section 11111 (relating to use of citizen band radios on buses) and the item relating thereto in the table of sections of chapter 111 are repealed.

(38) Section 11126 (distribution of coal cars) and the item relating thereto in the table of sections of chapter 111 are repealed.

(39) Section 11127 (relating to service of household freight forwarders) and the item relating thereto in the table of sections of chapter 111 are repealed.

(40) Section 11142 (relating to uniform accounting system for motor carriers) and the item relating thereto in the table of sections of chapter 111 are repealed.

(41) Section 11161 (relating to railroad accounting principles board) and the item relating thereto in the table of sections of chapter 111 are repealed.

(42) Section 11162 (relating to cost accounting principles) and the item relating thereto in the table of sections of chapter 111 are repealed.

(43) Section 11163 (relating to implementation of cost accounting principles) and the item relating thereto in the table of sections of chapter 111 are repealed.

(44) Section 11164 (relating to certification of rail carrier cost accounting systems) and the item relating thereto in the table of sections of chapter 111 are repealed.

(45) Section 11167 (relating to report) and the item relating thereto in the table of sections of chapter 111 are repealed.

(46) Section 11168 (relating to authorization of appropriations) and the item relating thereto in the table of sections of chapter 111 are repealed.

(47) Section 11304 (relating to security interest in certain motor vehicles) and the item relating thereto in the table of sections of chapter 113 are repealed.

(48) Section 11321 (relating to limitation on ownership of certain water carriers) and the item relating thereto in the table of sections for chapter 113 are repealed.

(49) Section 11323 (relating to limitation on ownership of other carriers by household goods freight forwarders) and the item relating thereto in the table of sections for chapter 113 are repealed.

(50) Section 11345a (relating to motor carrier procedures for consolidation, merger, and acquisition of control) and the item relating thereto in the table of sections of chapter 113 are repealed.

(51) Section 11346 (relating to expedited rail carrier procedures for consolidation, merger, and acquisition of control) and the item relating thereto in the table of sections of chapter 113 are repealed.

(52) Section 11349 (relating to temporary operating approval for transactions involving motor and water carriers) and the item relating thereto in the table of sections of chapter 113 are repealed.

(53) Section 11350 (relating to responsibility of the Secretary of Transportation in certain transactions) and the item relating thereto in the table of sections of chapter 113 are repealed.

(54) Subchapter IV of chapter 113 (relating to financial structure) and the items relating thereto in the table of sections of chapter 113 are repealed.

(55) Section 11502 (relating to conferences and joint hearings with State authorities) and the item relating thereto in the table of sections of chapter 115 are repealed.

(56) Section 11503a (tax discrimination against motor carrier transportation property) and the item relating thereto in the table of sections of chapter 115 are repealed.

(57) Section 11505 (relating to State action to enjoin carriers from certain actions) and the item relating thereto in the table of sections of chapter 115 are repealed.

(58) Section 11506 (relating to registration of motor carriers by a State) and the item relating thereto in the table of sections of chapter 115 are repealed.

(59) Section 11507 (relating to prison-made property governed by State law) and the item relating thereto in the table of sections of chapter 115 are repealed.

(60) Section 11704 (relating to action by a private person to enjoin abandonment of service) and the item relating thereto in the table of sections of chapter 117 are repealed.

(61) Section 11708 (relating to private enforcement) and the item relating thereto in the table of sections of chapter 117 are repealed.

(62) Section 11709 (relating to liability for issuance of securities by certain carriers) and the item relating thereto in the table of sections of chapter 117 are repealed.

(63) Section 11711 (relating to dispute settlement program for household goods carriers) and the item relating thereto in the table of sections of chapter 117 are repealed.

(64) Section 11712 (relating to tariff reconciliation rules for motor common carriers of property) and the item relating thereto in the table of sections of chapter 117 are repealed.

(65) Section 11902a (relating to penalties for violations of rules relating to loading and unloading motor vehicles) and the item relating thereto in the table of sections of chapter 119 are repealed.

(66) Section 11905 (relating to transportation of passengers without charge) and the item relating thereto in the table of sections of chapter 119 are repealed.

(67) Section 11906 (relating to evasion of regulation of motor carriers and brokers) and the item relating thereto in the table of sections of chapter 119 are repealed.

(68) Section 11908 (relating to abandonment of service by household goods freight forwarders) and the item relating thereto in the table of sections of chapter 119 are repealed.

(69) Section 11911 (relating to issuance of securities, etc.) and the item relating thereto in the table of sections of chapter 119 are repealed.

(70) Section 11913a (relating to accounting principles violations) and the item relating

thereto in the table of sections of chapter 119 are repealed.

(71) Section 11917 (relating to weight-bumping in household goods transportation) and the item relating thereto in the table of sections of chapter 119 are repealed.

SEC. 122. COVERAGE OF CERTAIN ENTITIES UNDER OTHER, UNRELATED ACTS NOT AFFECTED.

Notwithstanding any provision of this Act, an entity that is, or is treated as, an employer under the Railroad Retirement Act, the Railroad Unemployment Insurance Act, or the Railroad Retirement Tax Act under subtitle IV of title 49, United States Code, as in effect on the day before the date of enactment of this Act, shall continue to be covered as employers under those Acts.

TITLE II—INTERMODAL SURFACE TRANSPORTATION BOARD

Subtitle A—Organization

SEC. 201. AMENDMENT TO SUBCHAPTER I.

(a) AMENDMENT.—Subchapter I of chapter 103 is amended to read as follows:

''SUBCHAPTER I—ESTABLISHMENT

''§ 10301. Establishment of Transportation Board

''(a) ESTABLISHMENT.—There is hereby established within the Department of Transportation the Intermodal Surface Transportation Board.

''(b) MEMBERSHIP.—(1) Members of the Transportation Board shall be appointed by the President, by and with the advice and consent of the Senate. The Transportation Board shall consist of 3 members until January 1, 1997, not more than 2 of whom shall be members of the same political party. Beginning on January 1, 1997, the Transportation Board shall consist of 5 members, no more than 3 of whom shall be members of the same political party.

''(2) At any given time, at least 2 members of the Transportation Board shall be individuals with professional standing and demonstrated knowledge in the fields of rail or motor transportation or transportation regulation or agriculture, and at least 1 member shall be an individual with professional or business experience in the private sector. Effective January 1, 1997, at least 2 members shall be individuals with professional standing and demonstrated knowledge in the fields of maritime transportation or its regulation.

''(3) The term of each member of the Transportation Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed 1 year. The President may remove a member for neglect of duty or malfeasance in office.

''(4)(A) On the effective date of this section, the members of the Interstate Commerce Commission shall become members of the Transportation Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission.

''(B) Effective January 1, 1997, two Federal Maritime Commission commissioners shall become members of the Board to serve terms expiring December 31, 1997, and December 31, 2000. The two members shall be selected in order of the expiration date of their Commission term, beginning with the term having the latest expiration date; provided, however, that the two members added under this subsection may not be from the same political party. The longer Board term shall be filled by the member having the later Federal Maritime Commission term expiration date. Effective January 1, 1997, the rights of any Federal Maritime Commission commissioner other than those designated under this paragraph to remain in office is terminated.

''(5) No individual may serve as a member of the Transportation Board for more than 2 terms. In the case of an individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than 1 additional term.

''(6) A member of the Transportation Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

''(7) A vacancy in the membership of the Transportation Board does not impair the right of the remaining members to exercise all of the powers of the Transportation Board. The Transportation Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

''(c) CHAIRMAN.—(1) There shall be at the head of the Transportation Board a Chairman, who shall be designated by the President from among the members of the Transportation Board. The Transportation Board shall be administered under the supervision and direction of the Chairman. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

''(2) Subject to the general policies, decisions, findings, and determinations of the Transportation Board the Chairman shall be responsible for administering the Transportation Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Transportation Board. The Chairman shall—

''(A) appoint and supervise, other than regular and full time employees in the immediate offices of another member, the officers and employees of the Transportation Board, including attorneys to provide legal aid and service to the Transportation Board and its members, and to represent the Transportation Board in any case in court;

''(B) appoint the heads of major offices with the approval of the Transportation Board;

''(C) distribute Transportation Board business among officers and employees and offices of the Transportation Board;

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

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

''§ 10302. Functions

''(a) INTERSTATE COMMERCE COMMISSION FUNCTIONS.—Except as otherwise provided in the Interstate Commerce Commission Sunset Act of 1995, or the amendments made thereby, the Transportation Board shall perform all functions that, immediately before the effective date of such Act, were functions of the Interstate Commerce Commission or were performed by any officer or employee of the Interstate Commerce Commission in the capacity as such officer or employee.

''(b) FEDERAL MARITIME COMMISSION FUNCTIONS.—On January 1, 1997, the Transportation Board shall perform all functions that, on that date, were functions of the Federal Maritime Commission or were performed by any officer or employee of the Federal Maritime Commission in the capacity as such officer or employee.

''§ 10303. Administrative provisions

''(a) EXECUTIVE REORGANIZATION.—For purposes of chapter 9 of title 5, United States Code, the Transportation Board shall be deemed to be an independent regulatory agency and an establishment of the United States Government.

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

''(c) INDEPENDENCE.—In the performance of their functions, the members, employees, and other personnel of the Transportation Board shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department of Transportation.

''(d) REPRESENTATION BY ATTORNEYS.—Attorneys designated by the Chairman of the Transportation Board may appear for, and represent the Transportation Board in, any civil action brought in connection with any function carried out by the Transportation Board pursuant to this subtitle or as otherwise authorized by law.

''(e) ADMISSION TO PRACTICE.—Subject to section 500 of title 5, the Transportation Board may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

''(f) BUDGET REQUESTS.—In each annual request for appropriations by the President, the Secretary of Transportation shall identify the portion thereof intended for the support of the Transportation Board and include a statement by the Transportation Board—

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

''(2) an assessment of the budgetary needs of the Transportation Board.

''(g) DIRECT TRANSMITTAL TO CONGRESS.—The Transportation Board shall transmit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the Secretary of Transportation. An officer of an agency may not impose conditions on or impair communications by the Transportation Board with Congress, or a committee or member of Congress, about the information.

''§ 10304. Annual report

''The Transportation Board shall annually transmit to the Congress a report on its activities.''.

(b) CONFORMING AMENDMENT.—The items relating to subchapter I of chapter 103 in the table of sections of such chapter are amended to read as follows:

''SUBCHAPTER I—ESTABLISHMENT

''Sec.
''10301. Establishment of Transportation Board.
''10302. Functions.
''10303. Administrative provisions.
''10304. Annual report.''.

SEC. 202. ADMINISTRATIVE SUPPORT.

The Secretary of Transportation shall provide administrative support for the Transportation Board.

SEC. 203. REORGANIZATION.

The Chairman of the Transportation Board may allocate or reallocate any function of the Transportation Board, consistent with this title and subchapter I of chapter 103, as amended by section 201 of this title, among the members or employees of the Transportation Board, and may establish, consolidate, alter, or discontinue in the Transportation Board any organizational entities that were entities of the Interstate Commerce Commission or the Federal Maritime Commission, as the Chairman considers necessary or appropriate.

SEC. 204. TRANSITION PLAN FOR FEDERAL MARITIME COMMISSION FUNCTIONS.

The Chairman of the Intermodal Surface Transportation Board and the Chairman of the Federal Maritime Commission shall meet within 90 days of enactment of this Act to develop a plan for the orderly transition of the functions of the Federal Maritime Commission to the Transportation Board, including appropriate

funding levels for the operations associated with the functions of the Federal Maritime Commission transferred to the Transportation Board, and shall submit such a plan to the Director of the Office of Management and Budget and to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure not later than 6 months after the enactment of this Act.

Subtitle B—Administrative

SEC. 211. POWERS.

Section 10321 is amended—

(1) by striking ''Interstate Commerce Commission'' in subsection (a) and inserting in lieu thereof ''Transportation Board'';

(2) striking subsection (b) and inserting the following:

''(b) The Transportation Board may obtain from carriers providing transportation and service subject to this part, and from persons controlling, controlled by, or under common control with those carriers to the extent that the business of that person is related to the management of the business of those carriers, information the Transportation Board decides is necessary to carry out this part.'';

(3) in subsection (c)(1), by striking ''Commission, an individual Commissioner, an employee board, and an employee delegated to act under section 10305 of this title'' and inserting in lieu thereof ''Transportation Board'';

(4) by striking paragraph (2) of subsection (c);

(5) by redesignating paragraph (3) of subsection (c) as paragraph (2); and

(6) by striking ''Commission'' each place it appears and inserting in lieu thereof ''Transportation Board''.

SEC. 212. COMMISSION ACTION.

(a) AMENDMENTS.—Section 10324 is amended—

*(1) in the section heading, by striking ''**Commission**'' and inserting in lieu thereof ''**Transportation Board**'';*

(2) by striking ''Interstate Commerce Commission'' in subsection (a) and inserting in lieu thereof ''Transportation Board'';

(3) by striking ''Commission'' each place it appears in subsection (b) and inserting in lieu thereof ''Transportation Board'';

(4) by striking subsection (c); and

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

''(c) The Transportation Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

''(1) reopen a proceeding;

''(2) grant rehearing, reargument, or reconsideration of an action of the Transportation Board; or

''(3) change an action of the Transportation Board.

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

''(d) Notwithstanding this subtitle, an action of the Transportation Board under this section is final on the date on which it is served, and a civil action to enforce, enjoin, suspend, or set aside the action may be filed after that date.''.

(b) CONFORMING AMENDMENT.—The item relating to section 10324 in the table of sections of chapter 103 is amended by striking ''Commission'' and inserting in lieu thereof ''Transportation Board''.

SEC. 213. SERVICE OF NOTICE IN COMMISSION PROCEEDINGS.

(a) AMENDMENTS.—Section 10329 is amended—

*(1) by striking ''**Commission**'' in the section heading;*

(2) by striking ''Interstate Commerce Commission'' in subsection (a) and inserting in lieu thereof ''Transportation Board'';

(3) striking ''(1)'' in subsection (a) and by striking paragraph (2) of subsection (a);

(4) striking ''subchapter I of'' in subsection (a);

(5) striking the second sentence in subsection (b);

(6) striking ''(1) in subsection (c) and by striking paragraphs (2) and (3);

(7) striking ''notices of the Commission shall be served as follows: (1) A'' in subsection (c) and inserting ''a'';

(8) by striking '', express, sleeping car,'' in subsection (c)(1);

(9) by striking ''Secretary of the'' in subsection (c);

(10) in subsection (d)—

(A) by striking '', express, sleeping car,''; and

(B) by striking ''who filed the tariff'';

(11) by striking subsection (e); and

(12) by striking ''Commission'' each place it appears and inserting in lieu thereof ''Transportation Board''.

(b) CONFORMING AMENDMENT.—The item relating to section 10329 in the table of sections of chapter 103 is amended by striking ''Commission''.

SEC. 214. SERVICE OF PROCESS IN COURT PROCEEDINGS.

Section 10330 is amended—

(1) by striking ''Interstate Commerce Commission'' in subsection (a) and inserting in lieu thereof ''Transportation Board'';

(2) by striking ''subchapter I of'' in the first sentence of subsection (a);

(3) by striking ''Secretary of the Commission'' in subsection (a) and inserting in lieu thereof ''Transportation Board'';

(4) by striking subsection (b); and

(5) by redesignating subsection (c) as subsection (b).

SEC. 215. STUDY ON THE AUTHORITY TO COLLECT CHARGES.

In addition to other user fees that the Transportation Board may impose, the Transportation Board shall complete, within 6 months after the date of enactment of this Act, a study on the authority necessary to assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Transportation Board in that fiscal year.

SEC. 216. FEDERAL HIGHWAY ADMINISTRATION RULEMAKING.

(a) ADVANCE NOTICE.—The Federal Highway Administration shall issue an advance notice of proposed rulemaking dealing with a variety of fatigue-related issues (including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness) not later than March 1, 1996.

(b) RULEMAKING.—The Federal Highway Administration shall issue a notice of proposed rulemaking dealing with such issues within one year after the advance notice described in subsection (a) is published, and shall issue a final rule dealing with those issues within 2 years after that date.

TITLE III—RAIL AND PIPELINE TRANSPORTATION

SEC. 301. GENERAL CHANGES IN REFERENCES TO COMMISSION, ETC.

Subtitle IV is amended—

(1) by striking ''Interstate Commerce Commission'' each place it appears (including chapter and section headings) and inserting ''Intermodal Surface Transportation Board'';

(2) by striking ''Commission'' each place it appears in reference to the Interstate Commerce Commission (including chapter and section headings) and inserting ''Transportation Board'';

(3) by striking ''Commissioner'' each place it appears in reference to a member of the Interstate Commerce Commission (including chapter and section headings) and inserting ''Transportation Board member'';

(4) by striking ''Commissioners'' each place it appears in reference to members of the Interstate Commerce Commission (including chapter and section headings) and inserting ''Transportation Board members'';

(5) by striking ''this subtitle'' each place it appears and inserting ''this part'';

(6) by inserting ''PART A—RAIL AND PIPELINE CARRIERS'' after ''SUBTITLE IV—INTERSTATE COMMERCE'';

(7) by inserting before section 10101 the following:

''PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

''Chapter	*''SEC.*
''131. General provisions	*13101*
''133. Administrative provisions	*13301*
''135. Jurisdiction	*13501*
''137. Rates	*13701*
''139. Registration	*13901*
''141. Operations of carriers	*14101*
''143. Finance	*14301*
''145. Federal-State relations	*14501*
''147. Enforcement; investigations; rights; remedies	*14701*
''149. Civil and criminal penalties	*14901*

''PART A—RAIL AND PIPELINE CARRIERS''.

SEC. 302. RAIL TRANSPORTATION POLICY.

Section 10101a is amended by—

(1) striking ''and'' after the semicolon in paragraph (14);

(2) striking the period at the end of paragraph (15) and inserting a semicolon and ''and''; and

(3) adding at the end the following:

''(16) to provide expeditious remedies for traffic and facilities lacking effective transportation competition.''.

SEC. 303. DEFINITIONS.

Section 10102 is amended by—

(1) striking paragraphs (1), (2), (5), (6) (8) through (18), (19), (25), (27), and (30) through (33);

(2) redesignating the remaining paragraphs as paragraphs (1) through (11), respectively;

(3) striking paragraph (2) (as redesignated) and inserting:

''(2) 'common carrier' means a pipeline carrier and a rail carrier;'';

(4) inserting ''common carrier'' after ''railroad'' in paragraph (6) (as redesignated);

(5) striking '', fare,'' in paragraph (8) (as redesignated);

(6) striking ''of passengers or property, or both,'' in paragraph (10)(A) (as redesignated) and inserting ''of property,''; and

(7) striking ''passengers and'' in paragraph (10)(B) (as redesignated).

SEC. 304. GENERAL JURISDICTION.

Section 10501 is amended by—

(1) striking ''Subject to this chapter and other law, the'' in subsection (a), and inserting ''The'';

(2) inserting ''of property'' after ''transportation'' in subsection (a);

(3) striking ''express carrier, sleeping car carrier,'' in subsection (a)(1);

(4) striking ''passengers or'' in subsection (b)(1);

(5) striking ''subchapter'' in subsection (c) and inserting ''chapter'' and by striking ''(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)'' in subsection (c); and

(6) striking ''(b)'' after ''section 11501'' in subsection (d).

SEC. 305. RAILROAD AND WATER TRANSPORTATION CONNECTIONS AND RATES.

Section 10503 is amended by—

(1) striking ''passengers or'' each place it appears in subsection (a)(2); and

(2) striking ''passengers,'' in subsection (a)(2)(B).

SEC. 306. AUTHORITY TO EXEMPT RAIL CARRIER AND MOTOR CARRIER TRANSPORTATION.

Section 10505 is amended by—

(1) striking ''rail carrier and motor carrier'' from the section heading;

(2) striking subsection (a) and inserting the following:

''(a) In a matter subject to the jurisdiction of the Intermodal Surface Transportation Board under this chapter, the Transportation Board shall exempt a person, class of persons, or a transaction or service from the application of a provision of this title in whole or in part within 180 days after the filing of an application for an exemption, when the Transportation Board finds that the application of that provision in whole or in part—

''(1) is not necessary to carry out the transportation policy of section 10101 or section 10101a of this title; and

''(2) either (A) the transaction or service is of limited scope, or (B) the application of a provision of this title is not needed to protect shippers from the abuse of market power.'';

(3) striking subsection (d) and inserting the following:

''(d) The Transportation Board shall revoke an exemption in whole or in part, to the extent that application of a provision of this title to the person, class, or transportation is necessary to carry out the transportation policy of section 10101a of this title. The Transportation Board shall conclude a proceeding under this subsection within 180 days. In acting upon a request for revocation, the Transportation Board shall consider the availability of other economic transportation alternatives, in addition to any other factors it deems relevant. If a request for revocation under this subsection is accompanied by a complaint seeking monetary damages for a violation of a provision of this title by a railroad, and the Transportation Board does not render a final decision on such request within 180 days after the filing of the revocation request and complaint, then any monetary damages which the Transportation Board may award at the conclusion of the proceeding shall be calculated from no later than the 181st day following the filing of the revocation request and complaint if the Transportation Board finds that such failure to render a final decision within 180 days is due in substantial part to dilatory practices of the railroad.'';

(4) striking subsection (f) and inserting the following:

''(f) The Transportation Board may exercise its authority under this section to exempt transportation that is provided by a carrier as a part of a continuous intermodal movement.''; and

(5) striking subsection (g) and inserting the following:

''(g) The Transportation Board may not exercise its authority under this section to relieve a carrier of its obligation to protect the interests of employees as required by this part.''.

SEC. 307. STANDARDS FOR RATES, CLASSIFICATIONS, ETC.

Section 10701 is amended by—

(1) redesignating subsection (c) as subsection (b);

(2) striking ''subchapter I or III of chapter 105'' in subsection (b) as so redesignated and inserting ''chapter 105'';

(3) striking ''the jurisdiction of the Commission under either of those subchapters'' in subsection (b) as so redesignated and inserting ''jurisdiction either under chapter 105 of this part or under part B of this subtitle''; and

(4) striking subsections (d) through (f).

SEC. 308. STANDARDS FOR RATES FOR RAIL CARRIERS.

Section 10701a is amended by—

(1) striking ''subchapter I of'' in subsection (a);

(2) striking ''lesser of the percentages described in clauses (i) and (ii) of section 10707a(e)(2)(A) of this title'' in subparagraphs (2)(A)(i) and (2)(B)(i) of subsection (b), and inserting ''percentage described in section 10707a(d)(1)''; and

(3) adding at the end of subsection (b) the following:

''(4)(A) Within 1 year after the date of enactment of the Interstate Commerce Commission Sunset Act of 1995, the Transportation Board shall complete the Interstate Commerce Commission non-coal rate guidelines proceeding pending on the date of enactment of the Interstate Commerce Commission Sunset Act of 1995 to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a stand-alone cost presentation is impractical.

''(B) Within 6 months after that date of enactment, the Transportation Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates. The procedures shall include appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings and for ensuring prompt disposition of motions and interlocutory administrative appeals.

''(C) In a proceeding to challenge the reasonableness of a railroad rate, other than a proceeding arising under section 10707 of this title, the Transportation Board shall make its determination as to the reasonableness of the challenged rate—

''(i) within 6 months after the close of the administrative record if the determination is based upon a stand-alone cost presentation, or

''(ii) within 3 months after the close of the administrative record if the determination is based upon the methodology adopted by the Board pursuant to paragraph (4)(A).''.

SEC. 309. AUTHORITY FOR CARRIERS TO ESTABLISH RATES, CLASSIFICATIONS, ETC.

Section 10702 is amended by—

(1) beginning with ''service,'' in paragraph (2) of subsection (a) striking all that follows and inserting ''service.''; and

(2) striking subsections (b) and (c).

SEC. 310. AUTHORITY FOR CARRIERS TO ESTABLISH THROUGH ROUTES.

Section 10703 is amended by—

(1) striking '', express, sleeping car,'' in paragraph (1) of subsection (a);

(2) striking paragraphs (3) and (4) of subsection (a); and

(3) replacing ''Commission under subchapter I, II (insofar as motor carriers of property are concerned), or III of'' in subsection (b) with ''Transportation Board under''.

SEC. 311. AUTHORITY AND CRITERIA FOR PRESCRIBED RATES, CLASSIFICATIONS, ETC.

Section 10704 is amended by—

(1) striking ''subchapter I of'' and ''(including a maximum or minimum rate, or both)'' in the first sentence of subsection (a)(1);

(2) striking ''subchapter'' in the first sentence of subsection (a)(2) and inserting ''chapter'';

(3) striking the third sentence of subsection (a)(2);

(4) striking paragraph (3) of subsection (a) and redesignating paragraph (4) as (3);

(5) striking ''within 180 days after the effective date of the Staggers Rail Act of 1980 and'' and ''thereafter'' in subsection (a)(3), as redesignated;

(6) striking subsections (b), (c), (d) and (e);

(7) redesignating subsection (f) as subsection (b);

(8) striking ''on its own initiative or'' in subsection (b) as redesignated; and

(9) striking the last sentence of subsection (b), as redesignated.

SEC. 312. AUTHORITY FOR PRESCRIBED THROUGH ROUTES, JOINT CLASSIFICATIONS, ETC.

Section 10705 is amended by—

(1) striking ''subchapter I, II (except a motor common carrier of property), or III of'', and ''(including maximum or minimum rates or both)'' in paragraph (1) of subsection (a);

(2) striking paragraph (3) of subsection (a);

(3) striking subsections (b) and (h) and redesignating subsections (c) through (g) as subsections (b) through (f);

(4) striking ''or (b)'' and '', water carrier, or motor common carrier of property'' in subsection (b), as redesignated;

(5) striking ''tariff'' in subsection (d), as redesignated, and inserting ''proposed rate change'';

(6) striking '', water common carrier, or motor common carrier of property'' in subsection (d), as redesignated;

(7) striking ''or (b)'' and ''on its own initiative or'' in the first sentence of subsection (e)(1) as redesignated;

(8) striking ''if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission'' in the second sentence of subsection (e)(1), as redesignated; and

(9) striking ''subsection (f)'' in subsection (f), as redesignated, and inserting ''subsection (e)''.

SEC. 313. ANTITRUST EXEMPTION FOR RATE AGREEMENTS.

Section 10706 is amended by—

(1) striking subsection (a)(3)(B);

(2) redesignating paragraphs (3)(C) and (D) of subsection (a) as paragraphs (3)(B) and (C);

(3) striking ''consider'' in subsection (a)(3)(B)(ii)(II), as redesignated, and inserting ''considered'';

(4) striking ''subchapter I of'' in subsection (a)(5)(A);

(5) striking ''the effective date of the Staggers Rail Act of 1980'' in subsection (a)(5)(C), and inserting ''October 1, 1980,'';

(6) striking subsections (b), (c), and (d) and redesignating subsections (e) through (g) as subsections (b) through (d);

(7) striking the first sentence of subsection (c), as redesignated, and inserting ''The Transportation Board may review an agreement approved under subsection (a) of this section and shall change the conditions of approval or terminate it when necessary to comply with the public interest.'';

(8) striking ''subsection (a), (b), or (c) of this section.'' in subsection (d), as redesignated and inserting ''subsection (a).''; and

(9) striking subsections (h) and (i).

SEC. 314. INVESTIGATION AND SUSPENSION OF NEW RAIL RATES, ETC.

Section 10707 is amended by—

(1) striking the first sentence of subsection (a) and inserting ''When a new individual or joint rate or individual or joint classification, rule, or practice related to a rate is proposed by a rail carrier providing transportation subject to the jurisdiction of the Intermodal Surface Transportation Board under chapter 105 of this title, the Transportation Board may begin a proceeding, on complaint of an interested party, to determine whether the proposed rate, classification, rule, or practice violates this part.'';

(2) striking subsection (d)(3) and redesignating subsection (d)(4) as (d)(3);

(3) striking ''or section 10761'' in subsection (d)(3), as redesignated; and

(4) striking ''the Commission shall, by rule, establish standards and procedures permitting a rail carrier to '' in subsection (d)(3), as redesignated, and inserting ''a rail carrier may''.

SEC. 315. ZONE OF RAIL CARRIER RATE FLEXIBILITY.

Section 10707a is amended by—

(1) striking ''Commencing with the fourth quarter of 1980, the'' in subsection (a)(2)(B) and inserting ''The'';

(2) striking ''subchapter I of chapter 105 of this title may'' in subsection (b)(1) and inserting ''chapter 105 of this title is authorized to'';

(3) inserting a period after ''involved'' in paragraph (1) of subsection (b) and striking the remainder of the paragraph;

(4) striking ''may not'' in subsection (b)(3) and inserting ''is not authorized to'';

(5) striking ''(A)'' and ''or (B) inflation based rate increases under section 10712 of this title applicable to that rate'' in subsection (b)(3);

(6) striking subsections (c), (d) and (e), redesignating subsections (f), (g), and (h) as subsections (d), (e), and (f), and inserting after subsection (b) the following:

''(c) In determining whether a rate is reasonable, the Transportation Board shall consider, among other factors, evidence of the following:

''(1) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

''(2) 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

''(3) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.''; and

(7) by striking subsection (d), as redesignated, and inserting the following:

''(d)(1) A finding by the Board that a rate increase exceeds the increase authorized under this section does not establish a presumption that (A) the rail carrier proposing such rate increase has or does not have market dominance over the transportation to which the rate applies, or (B) the proposed rate exceeds or does not exceed a reasonable maximum.

''(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 20 percentage points above the revenue-variable cost percentage applicable under section 10709(d) of this title, the Transportation Board may 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 percentage described in subparagraph (A) of this paragraph (without regard to whether such rate increase is authorized under this section), the Transportation Board 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.''.

SEC. 316. INVESTIGATION AND SUSPENSION OF NEW PIPELINE CARRIER RATES, ETC.

Section 10708 is amended by—

(1) striking subsection (a)(1) and inserting the following:

''(a)(1) The Intermodal Surface Transportation Board may begin a proceeding to determine the lawfulness of a proposed rate, classification, rule, or practice on application of an interested party when a new individual or joint rate or individual or joint classification, rule, or practice affecting a rate is proposed by a pipeline carrier subject to the Transportation Board's jurisdiction under chapter 105 of this part.'';

(2) striking ''an express, sleeping car, or'' in the third sentence of subsection (b) and inserting ''a''; and

(3) striking subsections (d) through (g).

SEC. 317. DETERMINATION OF MARKET DOMINANCE.

Section 10709 is amended by—

(1) adding at the end of subsection (a) the following: ''In making a determination under this section, the Transportation Board shall consider the availability of other economic transportation alternatives, in addition to any other factors it deems relevant.''

(2) striking ''subchapter I of'' in the first sentence of subsection (b); and

(3) striking subsection (d) and inserting the following:

''(d) DETERMINATIONS OF RATE CHALLENGES.—

''(1) 180 PERCENT SAFE HARBOR.—In making a determination under this section, the Transportation Board shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than 180 percent.

''(2) METHODOLOGY.—For purposes of determining the revenue-variable cost percentage for a particular transportation, variable costs shall be determined by using the carrier's costs, calculated using the Uniform Railroad Costing System (or an alternative cost finding methodology adopted by the Transportation Board in lieu thereof), with use of the current cost of capital for calculating the return on investment, and indexed quarterly to account for current wage and price levels in the region in which the carrier operates.

''(3) BURDEN OF PROOF; REBUTTAL.—A rail carrier may meet its burden of proof under this subsection by so establishing its variable costs, but a shipper may rebut that showing by evidence of such type, and in accordance with such burden of proof, as the Transportation Board may prescribe.

''(4) NO PRESUMPTIONS CREATED.—A finding by the Transportation Board that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 180 percent does not establish a presumption that—

''(A) such rail carrier has or does not have market dominance over such transportation, or

''(B) the proposed rate exceeds or does not exceed a reasonable maximum.''.

SEC. 318. CONTRACTS.

Section 10713 is amended by—

(1) striking ''subchapter I of'' in the first sentence of subsection (a);

(2) striking subsection (b)(1) and inserting the following:

''(b)(1) A summary of each contract for the transportation of agricultural products, including grain as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and products thereof, entered into under this section shall be filed with the Transportation Board, containing such nonconfidential information as the Transportation Board prescribes. The Transportation Board shall publish special rules for such contracts in order to assure that the essential terms of the contract are available to the general public. The parties to any such contract shall supply a copy of the full contract to the Transportation Board upon request.'';

(3) striking ''in tariff format'' in subparagraphs (A) and (C) of subsection (b)(2);

(4) striking subsection (b)(2)(D);

(5) striking ''other than a contract for the transportation of agricultural commodities (including forest products and paper),'' in subsection (d)(2)(A) and inserting ''for the transportation of agricultural commodities,'';

(6) strike ''only'' in (d)(2)(A)(i);

(7) striking ''the case of a contract for the transportation of agricultural commodities (including forest products and paper), in'' in subsection (d)(2)(B);

(8) inserting ''of agricultural commodities'' after ''filed by a shipper'' in subsection (d)(2)(B);

(9) striking the last sentence of subsection (d)(2)(B);

(10) striking ''A contract that is approved by the Commission'' in subsection (i)(1) and inserting ''In any contract entered into after the effective date of the Interstate Commerce Commission Sunset Act of 1995, if the shipper in writing expressly waives all rights and remedies under this part for the transportation covered by the contract, a contract entered into'';

(11) striking subsections (l) and (m); and

(12) striking ''(including forest products but not including wood pulp, wood chips, pulpwood or paper)'' in subsection (i)(1).

SEC. 319. GOVERNMENT TRAFFIC.

The text of section 10721 is amended to read as follows:

''A carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.''.

SEC. 320. RATES AND LIABILITY BASED ON VALUE.

Section 10730 is amended by—

(1) striking subsections (a) and (b);

(2) striking ''(c)'';

(3) striking ''rail carrier'' and inserting ''carrier''; and

(4) striking ''subchapter I of''.

SEC. 321. PROHIBITIONS AGAINST DISCRIMINATION BY COMMON CARRIERS.

Section 10741 is amended by—

(1) striking ''subchapter I of'' in subsection (a);

(2) striking subsection (c) and inserting the following:

''(c) A carrier providing transportation subject to the jurisdiction of the Transportation Board under chapter 105 of this title may not subject a freight forwarder providing service subject to jurisdiction under part B of this subtitle to unreasonable discrimination whether or not the freight forwarder is controlled by that carrier.'';

(3) striking ''subchapter I of'' in subsection (e);

(4) striking subsection (f)(1) and inserting the following: ''(1) contracts under section 10713 of this title;'';

(5) striking paragraphs (2), (3), and (5) of subsection (f) and redesignating paragraph (4) as paragraph (2); and

(6) striking ''paragraphs (2), (3), and (4)'' in subsection (f) and inserting ''paragraph (2)''.

SEC. 322. FACILITIES FOR INTERCHANGE OF TRAFFIC.

Section 10742 is amended by—

(1) striking ''subchapter I or III of'' and ''passengers and''; and

(2) striking ''either of those subchapters.'' and inserting ''Part A or B of this subtitle.''.

SEC. 323. LIABILITY FOR PAYMENT OF RATES.

Section 10744 is amended by—

(1) striking '', motor, or water common'' in the first sentence of subsection (a)(1);

(2) striking ''or express'' in the first sentence of subsection (b);

(3) striking ''subtitle'' in the first sentence of subsections (a)(1) and (b) and inserting ''part'';

(4) striking paragraph (2) of subsection (c) and renumbering paragraph (3) as paragraph (2); and

(5) striking ''or express'' in subsection (c)(2), as redesignated.

SEC. 324. CONTINUOUS CARRIAGE OF FREIGHT.

Section 10745 is amended by striking ''subchapter I of ''.

SEC. 325. TRANSPORTATION SERVICES OR FACILITIES FURNISHED BY SHIPPER.

Section 10747 is amended by—

(1) striking the first and second sentences and inserting the following: ''A carrier providing transportation or service subject to the jurisdiction of the Intermodal Surface Transportation Board under chapter 105 of this title may establish a charge or allowance for transportation or service for property when the owner of the property, directly or indirectly, furnishes a service related to or an instrumentality used in the transportation or service. The Transportation Board may prescribe the maximum reasonable charge or allowance paid for such service or instrumentality furnished.''; and

(2) striking ''on its own initiative or'' in the last sentence.

SEC. 326. DEMURRAGE CHARGES.

Section 10750 is amended by striking ''subchapter I of ''.

SEC. 327. TRANSPORTATION PROHIBITED WITHOUT TARIFF.

Section 10761 is amended to read as follows:

''§ 10761. Transportation of agricultural products prohibited without tariff

''Except when providing transportation by contract as provided in this subtitle, a carrier providing transportation of agricultural products, including grain as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and products thereof, and fertilizer and components thereof, subject to the jurisdiction of the Intermodal Surface Transportation Board under chapter 105 of this title shall provide that transportation only if the rate for the transportation is contained in a tariff that is in effect under this subchapter. A carrier subject to this subsection may not charge or receive a different compensation for that transportation than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation, or another device.''.

SEC. 328. GENERAL ELIMINATION OF TARIFF FILING REQUIREMENTS.

Section 10762 is amended to read as follows:

''§ 10762. General elimination of tariff filing requirements

''(a) Except as provided in section 10713 of this title, a carrier providing transportation of agricultural products including grain as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and products thereof, and fertilizer and components thereof, subject to the jurisdiction of the Intermodal Surface Transportation Board under chapter 105 of this title shall publish, keep open and retain for public inspection, and immediately furnish to an entity requesting the same, tariffs containing its rates for the transportation of such commodities and its classifications, rules, and practices related to such rates. Tariffs are not required for any other commodity.

''(b)(1) Within 180 days after the enactment of the Interstate Commerce Commission Sunset Act of 1995, the Intermodal Surface Transportation Board shall prescribe the form and manner of publishing, keeping open, furnishing to the public, and retaining for public inspection tariffs under this section. The Transportation Board may prescribe specific charges to be identified in a tariff required under this section to be published, kept open, furnished to the public, or retained for public inspection, but those tariffs must identify plainly—

''(A) the places between which property will be transported;

''(B) privileges given and facilities allowed; and

''(C) any rules that change, affect, or determine any part of the published rate.

''(2) A joint tariff published by a carrier under this section shall identify the carriers that are parties to it.

''(c)(1) When a carrier proposes to change a rate for transportation subject to this section, or a classification, rule, or practice related to such rate, the carrier shall publish, transmit, and keep open for public inspection a notice of the proposed change as required under subsections (a) and (b) of this section.

''(2) A notice published under this subsection shall plainly identify the proposed change or new or reduced rate and indicate its proposed effective date. 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 1 day 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.

''(d) The Transportation Board may reduce the notice period of subsection (c) of this section if cause exists. The Transportation Board may change the other requirements of this section if cause exists in particular instances or as they apply to special circumstances.

''(e) Acting in response to a complaint or on its own motion, the Transportation Board may reject a tariff published under this section if that tariff violates this section or a regulation of the Transportation Board carrying out this section.''.

SEC. 329. DESIGNATION OF CERTAIN ROUTES.

Section 10763 is amended by striking ''subchapter I of '' in subsection (a)(1).

SEC. 330. AUTHORIZING CONSTRUCTION AND OPERATION OF RAILROAD LINES.

Section 10901 is amended by—

(1) striking ''subchapter I of '' in subsection (a); and

(2) adding at the end the following new subsection:

''(f) SPECIAL RULE FOR NON-CLASS I TRANSACTIONS.—For all transactions involving Class II freight rail carriers, Class III freight rail carriers and non-carriers, that are not owned or controlled by a Class I rail carrier and that are not a commuter, switching or terminal railroad, which propose to acquire, construct, operate, or provide transportation over a railroad line pursuant to this section, the Transportation Board may, consistent with the public interest, require an arrangement for the protection of the interest of railroad employees who are adversely affected by the transaction not to exceed one year's salary per adversely affected employee and protection no less than required by sections 2 through 5 of the Worker Adjustment and Retraining Act, unless the adversely affected employees or their representatives and the parties to the transaction agree otherwise.''.

SEC. 331. AUTHORIZING ACTION TO PROVIDE FACILITIES.

Section 10902 is amended by striking ''subchapter I of '' in the first sentence.

SEC. 332. AUTHORIZING ABANDONMENT AND DISCONTINUANCE.

Section 10903 is amended by striking ''subchapter I of '' in subsection (a).

SEC. 333. FILING AND PROCEDURE FOR APPLICATIONS TO ABANDON OR DISCONTINUE.

Section 10904 is amended by—

(1) striking ''subchapter I of '' in subsection (a)(2);

(2) striking subsection (d)(2);

(3) striking ''(1)'' in subsection (d); and

(4) striking ''the application was approved by the Secretary of Transportation as part of a plan or proposal under section 333(a)–(d) of this title, or'' in subsection (e)(3).

SEC. 334. EXCEPTIONS.

Section 10907 is amended by striking ''subchapter I of '' in subsection (a).

SEC. 335. RAILROAD DEVELOPMENT.

Section 10910 is amended by—

(1) striking paragraph (2) of subsection (a) and inserting the following:

''(2) 'railroad line' means any line of railroad.'';

(2) striking ''the effective date of the Staggers Rail Act of 1980'' in subsection (g)(2), and inserting ''October 1, 1980,''; and

(3) striking subsection (k) and inserting the following:

''(k) The Transportation Board shall maintain such regulations and procedures as may be necessary to carry out the provisions of this section.''.

SEC. 336. PROVIDING TRANSPORTATION, SERVICE, AND RATES.

Section 11101 is amended to read as follows:

''§ 11101. Providing transportation, service, and rates

''(a) A carrier providing transportation or service subject to the jurisdiction of the Intermodal Surface Transportation Board under chapter 105 of this title shall provide the transportation or service on reasonable request.

''(b) Notwithstanding any other provision of this title, a rail carrier providing transportation service subject to the jurisdiction of the Transportation Board under chapter 105 of this title shall provide, on reasonable written request, common carrier rates and other common carrier service terms of the type requested for specified services between specified points. The response by a rail carrier to a request for such rates or other service terms shall be in writing, or shall be available electronically, and forwarded to the requesting person no later than 30 days after receipt of the request. A rail carrier shall not refuse to respond to a request under this subsection on grounds that the movement at issue is subject at the time a request is made to a contract entered into under section 10713 of this title.

''(c) Common carrier rates and service terms provided pursuant to subsection (b) of this section shall be subject to the provisions of this title.

''(d) A rail carrier may not increase any common carrier rates, or change any common carrier service terms, provided pursuant to subsection (b) unless at least 20 days' written or electronic notice is first provided to the person that, within the previous 12 months, made a written or electronic request for the issue rate or service. Any such increases or changes shall be subject to provisions of this subtitle.''.

SEC. 337. USE OF TERMINAL FACILITIES.

Section 11103 is amended by striking ''subchapter I of '' in subsection (a).

SEC. 338. SWITCH CONNECTIONS AND TRACKS.

Section 11104 is amended by striking ''subchapter I of '' in subsection (a).

SEC. 339. CRITERIA.

Section 11121 is amended by—

(1) striking ''subchapter I of '' in subsection (a)(1);

(2) striking subsection (a)(2) and inserting the following:

''(2) The Transportation Board may require a rail carrier to file its car service rules with the Transportation Board.'';

(3) striking '', 11127,'' in subsection (b); and

(4) adding at the end the following:

''(c) The Transportation Board shall consult, as it deems necessary, with the National Grain Car Council on matters within the charter of that body.''.

SEC. 340. REROUTING TRAFFIC ON FAILURE OF RAIL CARRIER TO SERVE PUBLIC.

Section 11124 is amended by striking ''subchapter I of '' in subsection (a).

SEC. 341. DIRECTED RAIL TRANSPORTATION.

Section 11125 is amended by striking ''subchapter I of '' in subsection (a).

SEC. 342. WAR EMERGENCIES; EMBARGOES.

Section 11128 is amended by—

(1) striking ''sections 11123(a)(4) and 11127(a)(1)(C)'' and inserting ''section 11123(a)'' in subsection (a)(1); and

(2) striking ''subchapter I of'' in subsection (a)(2).

SEC. 343. DEFINITIONS FOR SUBCHAPTER III.

Section 11141 is amended to read as follows:

''§ 11141. Definitions

''In this subchapter—

''(1) 'carrier' and 'lessor' include a receiver or trustee of a carrier and lessor respectively.

''(2) 'lessor' means a person owning a railroad or a pipeline that is leased to and operated by a carrier providing transportation subject to the jurisdiction of the Intermodal Surface Transportation Board under chapter 105 of this title.

''(3) 'association' means an organization maintained by or in the interest of a group of carriers providing transportation or service subject to the jurisdiction of the Intermodal Surface Transportation Board that performs a service, or engages in activities, related to transportation under this part.''.

SEC. 344. DEPRECIATION CHARGES.

Section 11143 is amended by—

(1) striking ''subchapter I or III of''; and

(2) striking ''and may, for a class of carriers providing transportation subject to its jurisdiction under subchapter II of that chapter,''.

SEC. 345. RECORDS, ETC.

Section 11144 is amended by—

(1) striking '', brokers,'' in subsection (a)(1);

(2) striking ''or express'' and ''subchapter I of'' in subsection (a)(2);

(3) striking '', broker,'' in subsection (b)(1);

(4) striking ''broker,'' in subsection (b)(2)(A);

(5) striking ''or express'' in subsection (b)(2)(C);

(6) redesignating subsection (d) as subsection (c); and

(7) striking ''brokers,'' in subsection (c), as redesignated.

SEC. 346. REPORTS BY CARRIERS, LESSORS, AND ASSOCIATIONS.

Section 11145 is amended by—

(1) striking ''brokers,'' in subsection (a)(1);

(2) striking ''or express,'' in subsection (a)(2);

(3) striking ''broker,'' in the first sentence of subsection (b)(1);

(4) striking the second sentence of subsection (b)(1); and

(5) striking subsection (c).

SEC. 347. ACCOUNTING AND COST REPORTING.

Section 11166 is amended by—

(1) striking ''subchapter I of'' in the first sentence of subsection (a);

(2) striking the third sentence of subsection (a); and

(3) striking ''the cost accounting principles established by the Transportation Board or under generally accepted accounting principles or the requirements of the Securities and Exchange Commission'' in subsection (b) and inserting ''the appropriate cost accounting principles''.

SEC. 348. SECURITIES, OBLIGATIONS, AND LIABILITIES.

Section 11301(a)(1) is amended by—

(1) striking ''or sleeping car''; and

(2) striking ''subchapter I of''.

SEC. 349. EQUIPMENT TRUSTS.

Section 11303 is amended by adding at the end thereof the following:

''(c) The Transportation Board shall collect, maintain and keep open for public inspection a railway equipment register consistent with the manner and format maintained at the time of enactment of the Interstate Commerce Commission Sunset Act of 1995.

''(d) A mortgage, lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of or security interest in railroad cars, locomotives, or other rolling stock, or accessories used on such railroad cars, locomotives, or other rolling stock (including superstructures and racks), or any assignment thereof, which—

''(1) is duly constituted under the laws of a country other than the United States; and

''(2) relates to property that bears the reporting marks and identification numbers of any person domiciled in or corporation organized under the laws of such country,

shall be recognized with the same effect as having been filed under this section.

''(e) Interests with respect to which documents are filed or recognized under this section are deemed perfected in all jurisdictions, and shall be governed by applicable State or foreign law in all matters not specifically governed by this section.''.

SEC. 350. RESTRICTIONS ON OFFICERS AND DIRECTORS.

Section 11322 is amended by—

(1) redesignating subsections (a) and (b) as subsections (b) and (c), respectively;

(2) inserting before subsection (b), as redesignated, the following:

''(a) In this section ''carrier'' means a rail carrier providing transportation subject to the jurisdiction of the Intermodal Surface Transportation Board under chapter 105 of this title (except a street, suburban, or interurban electric railway not operated as a part of a general railroad system of transportation), and a corporation organized to provide transportation by rail carrier subject to that chapter.'';

(3) striking ''as defined in section 11301(a)(1) of this title'' in subsection (b) as redesignated; and

(4) striking ''subsection (a)'' and inserting ''subsection (b)'' in subsection (c), as redesignated.

SEC. 351. LIMITATION ON POOLING AND DIVISION OF TRANSPORTATION OR EARNINGS.

Section 11342 is amended by—

(1) striking ''subchapter I, II, or III of'' in the first sentence of subsection (a);

(2) striking ''Except as provided in subsection (b) for agreements or combinations between or among motor common carriers of property, the'' in the second sentence of subsection (a) and inserting ''The''; and

(3) striking subsections (b) and (d) and redesignating subsections (c) and (e) as subsections (b) and (c), respectively.

SEC. 352. CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL.

Section 11343 is amended by—

(1) inserting ''(except a pipeline carrier)'' after ''involving carriers'' in subsection (a);

(2) striking ''subchapter I (except a pipeline carrier), II, or III of'' in subsection (a);

(3) striking paragraph (1) of subsection (d) and striking ''(2)'' in paragraph (2); and

(4) striking subsection (e).

SEC. 353. GENERAL PROCEDURE AND CONDITIONS OF APPROVAL FOR CONSOLIDATION, ETC.

Section 11344 is amended by—

(1) striking the third sentence in subsection (a);

(2) striking ''subchapter I of that chapter'' in the last sentence of subsection (a) and inserting ''chapter 105'';

(3) striking paragraph (2) of subsection (b) and striking ''(1)'' in the first paragraph of subsection (b);

(4) striking the fourth sentence of subsection (c);

(5) striking ''When a rail carrier is involved in the transaction, the'' in the last sentence of subsection (c) and inserting ''The'';

(6) striking the last two sentences of subsection (d); and

(7) striking subsection (e).

SEC. 354. RAIL CARRIER PROCEDURE FOR CONSOLIDATION, ETC.

Section 11345 is amended by—

(1) striking ''subchapter I of'' in the first sentence of subsection (a);

(2) inserting '', including comments by the Secretary of Transportation and the Attorney General,'' before ''may be filed'' in the first sentence of subsection (c)(1);

(3) striking the last two sentences of subsection (c)(1);

(4) inserting '', including comments by the Secretary of Transportation and the Attorney General,'' before ''may be filed'' in the first sentence of subsection (d)(1); and

(5) striking the last two sentences of subsection (d)(1).

SEC. 355. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Section 11347 is amended by striking ''or section 11346'' in the first sentence.

SEC. 356. AUTHORITY OVER NONCARRIER ACQUIRERS.

Section 11348(a) is amended by striking all after the colon and inserting ''sections 504(f) and 10764, subchapter III of chapter 111, and sections 11301, 11901(e), and 11909.''.

SEC. 357. AUTHORITY OVER INTRASTATE TRANSPORTATION.

Section 11501 is amended by—

(1) striking subsections (a), (e), (g) and (h) and redesignating subsections (b), (c), (d), and (f) as subsections (a), (b), (c) and (d), respectively;

(2) striking paragraphs (2) through (6) of subsection (a), as redesignated;

(3) striking ''(1)'' and ''subchapter I of'' in subsection (a), as redesignated;

(4) striking ''subchapter I of'' in subsection (b), as redesignated;

(5) striking ''subchapter I of'' in subsection (c)(1), as redesignated;

(6) striking ''subsection (a) of this section and'' in subsection (c)(2), as redesignated; and

(7) striking the first sentence of subsection (d), as redesignated, and inserting the following: ''The Transportation Board may take action under this section only after a full hearing.''.

SEC. 358. TAX DISCRIMINATION AGAINST RAIL TRANSPORTATION PROPERTY.

Section 11503 is amended by—

(1) striking ''subchapter I of'' in subsection (a)(3); and

(2) striking ''subchapter I of'' in subsection (b)(4).

SEC. 359. WITHHOLDING STATE AND LOCAL INCOME TAX BY CERTAIN CARRIERS.

Section 11504 is amended by—

(1) striking ''subchapter I of'' in subsection (a);

(2) striking subsections (b) and (c) and redesignating subsection (d) as subsection (b); and

(3) striking '', motor, and motor private'' and ''subsection (a) or (b) of'' in subsection (b), as redesignated.

SEC. 360. GENERAL AUTHORITY FOR ENFORCEMENT, INVESTIGATIONS, ETC.

Section 11701 is amended by—

(1) striking '', broker or freight forwarder'' in the second and fourth sentences of subsection (a);

(2) striking the third sentence of subsection (a);

(3) striking the first 2 sentences of subsection (b) and inserting the following: ''A person, including a governmental authority, may file with the Transportation Board a complaint about a violation of this part by a carrier providing transportation or service subject to the jurisdiction of the Transportation Board under this part. The complaint must state the facts that are the subject of the violation.''; and

(4) striking ''subchapter I of'' in the last sentence of subsection (b).

SEC. 361. ENFORCEMENT.

Section 11702 is amended by—

(1) striking ''(a)'' in subsection (a);

(2) striking paragraphs (4) through (6) of subsection (a);

(3) striking ''or 10933'' in paragraph (1);

(4) striking paragraph (2) and inserting the following:

''(2) to enforce subchapter III of chapter 113 of this title and to compel compliance with an order of the Transportation Board under that subchapter; and''

(5) striking ''subchapter I of'' in paragraph (3);

(6) striking the semicolon at the end of paragraph (3) and inserting a period; and

(7) striking subsection (b).

SEC. 362. ATTORNEY GENERAL ENFORCEMENT.

Section 11703 is amended by striking ''or permit'' wherever it appears in subsection (a).

SEC. 363. RIGHTS AND REMEDIES.

Section 11705 is amended by—

(1) striking ''or a freight forwarder'' in subsection (a);

(2) striking subsection (b)(1) and inserting the following:

''(b)(1) A carrier providing transportation or service subject to the jurisdiction of the Transportation Board under chapter 105 of this title is liable to a person for amounts charged that exceed the applicable rate for the transportation or service.'';

(3) striking ''subparagraph I or III of'' in subsection ((b)(2);

(4) striking subsection (b)(3);

(5) striking ''subchapter I or III of'' in the first sentence of subsection (c)(1);

(6) striking the second sentence of subsection (c)(1);

(7) striking ''subchapter I or III of'' in the second sentence of subsection (c)(2);

(8) striking ''subchapter I or III of'' in the first sentence of subsection (d)(1); and

(9) striking '', or (D) if a water carrier, in which a port of call on a route operated by that carrier is located'' and inserting ''or'' before ''(C)'' in the fourth sentence of subsection (d)(1).

SEC. 364. LIMITATION ON ACTIONS.

Section 11706 is amended by—

(1) striking subsection (a) and inserting the following:

''(a) A carrier providing transportation or service subject to the jurisdiction of the Intermodal Surface Transportation Board under chapter 105 of this title must begin a civil action to recover charges for the transportation or service provided by the carrier within 3 years after the claim accrues.'';

(2) striking the first sentence of subsection (b) and inserting ''A person must begin a civil action to recover overcharges under section 11705(b)(1) of this title within 3 years after the claim accrues.'';

(3) striking ''subchapter I or III of'' in the last sentence of subsection (b);

(4) striking ''(1)'' in subsection (c);

(5) striking paragraph (2) of subsection (c); and

(6) striking ''(c)(1)'' in the second sentence of subsection (d) and inserting ''(c)''.

SEC. 365. LIABILITY OF COMMON CARRIERS UNDER RECEIPTS AND BILLS OF LADING.

(a) Section 11707 is amended by—

(1) striking ''(a)(1)'' in subsection (a) and inserting ''(a)'';

(2) striking paragraph (2) of subsection (a);

(3) striking ''subchapter I, II, or IV of'' and ''and a freight forwarder'' in the first sentence of subsection (a), as amended;

(4) striking ''or freight forwarder'' in the second sentence of subsection (a), as amended;

(5) striking ''subchapter I, II, or IV'' in the second sentence of subsection (a), as amended, and inserting ''chapter 105 or subject to jurisdiction under part B of this subtitle'';

(6) striking '', except in the case of a freight forwarder,'' in the third sentence of subsection (a), as amended;

(7) striking ''diverted under a tariff filed under subchapter IV of chapter 107 of this title.'' in the third sentence of subsection (a), as amended, and inserting ''diverted.'';

(8) striking ''or freight forwarder'' in the fourth sentence of subsection (a);

(9) striking ''and freight forwarder'' in subsection (c)(1), and striking ''filed with the Commission'';

(10) striking paragraph (3) of subsection (c) and redesignating paragraph (4) as paragraph (3);

(11) striking ''or freight forwarder'' wherever it appears in subsection (e); and

(12) striking ''or freight forwarder's'' in subsection (e)(2).

(b) The index for chapter 117 is amended by striking out the item relating to section 11707 and inserting in lieu thereof the following:

''Sec. 11707. Liability of Carriers under receipts and bills of lading.''.

SEC. 366. LIABILITY WHEN PROPERTY IS DELIVERED IN VIOLATION OF ROUTING INSTRUCTIONS.

Section 11710 is amended by striking ''subchapter I of'' in subsection (a)(1).

SEC. 367. GENERAL CIVIL PENALTIES.

Section 11901 is amended by:

(1) striking ''subchapter I of'' in subsection (a) and subsection (b);

(2) striking subsection (c) and subsections (g) through (l), and redesignating subsections (d) through (f) as (c) through (e), respectively, and subsection (m) as (f);

(3) striking ''11127'' in subsection (d), as redesignated;

(4) striking ''(1)'' in subsection (d), as redesignated, and striking paragraph (2) of that subsection;

(5) striking ''subchapter I of'' each place it appears in subsection (e), as redesignated;

(6) striking ''(1)'' in subsection (f), as redesignated, and striking paragraph (2) of that subsection; and

(7) striking ''subsections (a)-(f) of'' in subsection (f), as redesignated.

SEC. 368. CIVIL PENALTY FOR ACCEPTING REBATES FROM COMMON CARRIER.

Section 11902 is amended by striking ''contained in a tariff filed with the Commission under subchapter IV of chapter 107 of this title''.

SEC. 369. RATE, DISCRIMINATION, AND TARIFF VIOLATIONS.

Section 11903 is amended by striking ''under chapter 107 of this title'' in subsection (a).

SEC. 370. ADDITIONAL RATE AND DISCRIMINATION VIOLATIONS.

Section 11904 is amended by—

(1) striking subsections (b) through (d);

(2) striking ''(a)(1)'' in subsection (a) and inserting ''(a)'';

(3) redesignating paragraphs (2) and (3) of subsection (a) as subsections (b) and (c), respectively;

(4) striking ''(A)'' and ''(B)'' in subsection (b), as redesignated, and inserting ''(1)'' and ''(2)'', respectively;

(5) striking ''subchapter I of'' in subsections (b) and (c), as redesignated; and

(6) striking 'under chapter 107 of this title'' in subsection (b), as redesignated.

SEC. 371. INTERFERENCE WITH RAILROAD CAR SUPPLY.

Section 11907 is amended by striking ''subchapter I of'' in subsections (a) and (b).

SEC. 372. RECORD KEEPING AND REPORTING VIOLATIONS.

Section 11909 is amended by—

(1) striking subsections (b) through (d);

(2) striking ''subchapter I of'' in subsection (a); and

(3) striking ''(a)'' in subsection (a).

SEC. 373. UNLAWFUL DISCLOSURE OF INFORMATION.

Section 11910 is amended by—

(1) striking paragraphs (2) through (4) of subsection (a);

(2) striking ''(a)(1)'' in subsection (a) and inserting ''(a)'';

(3) striking ''(A)'' and ''(B)'' in subsection (a) and inserting ''(1) and ''(2)'', respectively;

(4) striking ''subchapter I of'' in subsections (a) and (d); and

(5) striking ''or broker'' in subsection (b).

SEC. 374. CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL.

Section 11912 is amended by striking out ''11346,''.

SEC. 375. GENERAL CRIMINAL PENALTY.

Section 11914 is amended by—

(1) striking subsections (b) through (d);

(2) striking ''(a)'' in subsection (a);

(3) striking ''subchapter I of'' in the first sentence; and

(4) striking ''11321(a) or'' in the last sentence.

SEC. 376. FINANCIAL ASSISTANCE FOR STATE PROJECTS.

Section 22101 is amended by striking ''subchapter I of'' in the first sentence of subsection (a).

SEC. 377. STATUS OF AMTRAK AND APPLICABLE LAWS.

Section 24301 is amended by striking ''subchapter I of'' in subsections (c)(2)(B) and (d).

SEC. 378. RAIL-SHIPPER TRANSPORTATION ADVISORY COUNCIL.

(a) ESTABLISHMENT.—Chapter 103 is amended by adding at the end thereof the following:

"SUBCHAPTER VI. RAIL—SHIPPER TRANSPORTATION ADVISORY COUNCIL

"§ 10391. Rail—Shipper Transportation Advisory Council

''(a) ESTABLISHMENT; MEMBERSHIP.—There is established the Rail-Shipper Transportation Advisory Council (hereinafter in this section referred to as the ''Council'') to be composed of 15 members appointed by the Chairman of the Transportation Board, after recommendation from carriers and shippers, within 60 days after the date of enactment of the Interstate Commerce Commission Sunset Act of 1995. The members of the Council shall be appointed as follows:

''(1) The members of the Council shall be appointed from among citizens of the United States who are not regular full-time employees of the United States and shall be selected for appointment so as to provide as nearly as practicable a broad representation of the various segments of the rail and rail shipper industry.

''(2) Nine of the members shall be appointed from senior executive officers of organizations engaged in the railroad and rail shipping industry, which 9 members shall be the voting members of the Council. Council action and Council positions shall be determined by a majority vote of the members or by a majority vote of a quorum thereof. A majority of such voting members shall constitute a quorum. Of such 9 voting members—

''(A) at least 4 shall be representative of small shippers (as determined by the Chairman); and

''(B) at least 4 shall be representative of small railroads (Class II or III).

''(3) The remaining 6 members of the Council shall serve in a non-voting advisory capacity only, but shall be entitled to participate in Council deliberations. Of the remaining members—

''(A) 3 shall be from Class I railroads; and

''(B) 3 shall be from large shipper organizations (as determined by the Chairman).

''(4) The Secretary of Transportation and the members of the Transportation Board shall serve as ex officio members of the Council. The Council shall not be subject to the Federal Advisory Committee Act. A list of the members appointed to the Council shall be forwarded to the Chairmen and ranking members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure.

''(5) Each ex officio member of the Council may designate an alternate, who shall serve as a member of the Council whenever the ex officio member is unable to attend a meeting of the Council. Any such designated alternate shall be selected from individuals who exercise significant decision-making authority in the Federal agency involved.

''(b) TERM OF OFFICE.—The members of the Council shall be appointed for a term of office of three years, except that of the members first appointed—

''(1) 5 members shall be appointed for terms of 1 year, and

''(2) 5 members shall be appointed for terms of 2 years,

as designated by the Chairman at the time of appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office. Vacancies on the Council shall be filled in the same manner in which the original appointments were made. No member of the Council shall be eligible to serve in excess of two consecutive terms.

''(c) ELECTION AND DUTIES OF OFFICERS.—The Council Chairman and Vice Chairman and other appropriate officers of the Council shall be elected by and from the voting members of the Council. The Council Chairman shall serve as the Council's executive officer and shall direct the administration of the Council, assign officer and committee duties, and shall be responsible for issuing and communicating the reports, policy positions and statements of the Council. In the event that the Council Chairman is unable to serve, the Vice Chairman shall act as Council Chairman.

''(d) EXPENSES.—The members of the Council shall receive no compensation for their services as such, but upon request by the Council Chairman, based on a showing of significant economic burden, the Secretary of Transportation or the Chairman may provide reasonable and necessary travel expenses for such individual Council members from Department or Transportation Board funding sources in order to foster balanced representation on the Council. Upon request by the Council Chairman, the Secretary or Chairman may but is not required to pay the reasonable and necessary expenses incurred by the Council in connection with the coordination of Council activities, announcement and reporting of meetings, and preparation of such Council documents as are required or permitted by this Act. However, prior to making any funding requests the Council Chairman shall undertake best efforts to fund such activities privately unless he or she reasonably feels such private funding would create irreconcilable conflicts or the appearance thereof, or is otherwise impractical. The Council Chairman shall not request funding from any federal agency unless he or she provides written justification as to why private funding would create such conflict or appearance, or is otherwise impractical. To enable the Council to carry out its functions—

''(1) the Council Chairman may request directly from any Federal department or agency such personnel, information, services, or facilities, on a compensated or uncompensated basis, as he or she determines necessary to carry out the functions of the Council;

''(2) each Federal department or agency may, in their discretion, furnish the Council with such information, services, and facilities as the Council Chairman may request to the extent permitted by law and within the limits of available funds; and

''(3) Federal agencies and departments may, in their discretion, detail to temporary duty with the Council, such personnel as the Council Chairman may request for carrying out the functions of the Council, each such detail to be without loss of seniority, pay, or other employee status.

''(e) MEETINGS.—The Council shall meet at least semi-annually and shall hold such other meetings as deemed prudent by and at the call of the Council Chairman. Appropriate federal facilities, where available, may be used for such meetings. Whenever the Council, or a committee of the Council, considers matters that affect the jurisdictional interests of Federal agencies that are not represented on the Council, the Council Chairman may invite the heads of such agencies, or their alternates, to participate in the deliberations of the Council.

''(f) FUNCTIONS AND DUTIES; ANNUAL REPORT.—The Council shall advise the Secretary, Chairman, and relevant Congressional transportation policy oversight committees with respect to rail transportation policy issues it deems significant, with particular attention to issues of importance to small shippers and small railroads, including car supply, rates, competition, and effective procedures for addressing legitimate shipper and other claims. To the extent the Council addresses specific grain car issues, it shall coordinate such activities with the Grain Car Council. The Secretary and Chairman shall work in cooperation with the Council to provide research, technical and other reasonable support in developing any documents provided for hereby. The Council shall endeavor to develop within the private sector mechanisms to prevent or identify and effectively address obstacles to the most effective and efficient transportation system practicable. The Council shall prepare an annual report concerning its activities and the results of Council efforts to resolve industry issues within the Council structure in lieu of seeking regulatory or legislative relief, and propose whatever regulatory or legislative relief it deems appropriate in the event such efforts are unsuccessful. The Council shall include therein such recommendations as it deems appropriate with respect to the performance of the Secretary and Chairman under this chapter, and with respect to the operation and effectiveness of meetings and industry developments relating to the Council's efforts, and such other information as it deems appropriate. Such annual reports shall be reviewed by the Secretary and Chairman, and shall include the Secretary's and Chairman's views or comments relating to the accuracy of information therein, Council efforts and reasonableness of Council positions and actions and any other aspects of the Council's work as they may deem appropriate. The Council may prepare other reports or develop policy statements as the Council deems appropriate. Each annual report shall cover a fiscal year and shall be submitted to the Secretary and Chairman on or before the thirty-first day of December following the close of the fiscal year. Other such reports and statements may be communicated as the Council deems appropriate.''.

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 103 is amended by adding at the end thereof the following:

''SUBCHAPTER VI. RAIL AND SHIPPER TRANSPORTATION ADVISORY COUNCIL

''10391. Rail and shipper advisory council.''.

TITLE IV—MOTOR CARRIER, WATER CARRIER, BROKER, AND FREIGHT FORWARDER TRANSPORTATION

Subtitle A—Addition of Part B

SEC. 401. ENACTMENT OF PART B OF SUBTITLE IV, TITLE 49, UNITED STATES CODE.

Subtitle IV is amended by inserting after chapter 119 the following:

''PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

"CHAPTER 131—GENERAL PROVISIONS

"§ 13101. Transportation policy

''(a) To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to provide for the impartial regulation of the modes of transportation , and—

''(1) in regulating those modes—

''(A) to recognize and preserve the inherent advantage of each mode of transportation;

''(B) to promote safe, adequate, economical, and efficient transportation;

''(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

''(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

''(E) to cooperate with each State and the officials of each State on transportation matters; and

''(F) to encourage fair wages and working conditions in the transportation industry;

''(2) in regulating transportation by motor carrier, to promote competitive and efficient transportation services in order to (A) encourage fair competition, and reasonable rates for transportation by motor carriers of property; (B) promote Federal regulatory efficiency in the motor carrier transportation system and to require fair and expeditious regulatory decisions when regulation is required; (C) meet the needs of shippers, receivers, passengers, and consumers; (D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public; (E) allow the most productive use of equipment and energy resources; (F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (G) provide and maintain service to small communities and small shippers and intrastate bus services; (H) provide and maintain commuter bus operations; (I) improve and maintain a sound, safe, and competitive privately owned motor carrier system; (J) promote greater participation by minorities in the motor carrier system; and (K) promote intermodal transportation; and

''(3) in regulating transportation by motor carrier of passengers (A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this part; (B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this part; and (C) to ensure that Federal reform initiatives enacted by section 31138 of this title and the Bus Regulatory Reform Act of 1995 of 1982 are not nullified by State regulatory actions.

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

"§ 13102. Definitions

''In this part—

''(1) 'broker' means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

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

''(3) 'contract carriage' means—

''(A) for transportation provided before the date of enactment of the Interstate Commerce Commission Sunset Act of 1995, service provided pursuant to a permit issued under former section 10923 of this subtitle; and

''(B) for transportation provided on or after that date, service provided under an agreement entered into under section 14101(b) of this part;

''(4) 'control', when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means;

''(5) 'foreign motor carrier' means a person (including a motor carrier of property but excluding a motor private carrier)—

''(A)(i) which is domiciled in a contiguous foreign country; or

''(ii) which is owned or controlled by persons of a contiguous foreign country and is not domiciled in the United States; and

''(B) in the case of a person which is not a motor carrier of property, which provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A));

''(6) 'foreign motor private carrier' means a person (including a motor private carrier but excluding a motor carrier of property)—

''(A)(i) which is domiciled in a contiguous foreign country; or

''(ii) which is owned or controlled by persons of a contiguous foreign country and is not domiciled in the United States; and

''(B) in the case of a person which is not a motor private carrier, which provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A));

''(7) 'freight forwarder' means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

''(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

''(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

''(C) uses for any part of the transportation a carrier subject to jurisdiction under part A or part B of this subtitle; but the term does not include a person using transportation of an air carrier subject to part A of subtitle VII of this title;

''(8) 'highway' means a road, highway, street, and way in a State;

''(9) 'household goods' means—

''(A) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and similar property, whether the transportation is—

''(i) requested and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his dwelling; or

''(ii) arranged and paid for by another party;

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

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

''(10) 'household goods freight forwarder' means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles;

''(11) 'motor carrier' means a person providing motor vehicle transportation for compensation, including foreign motor carriers;

''(12) 'motor private carrier' means a person, other than a motor carrier, transporting property by motor vehicle when—

''(A) the transportation is as provided in section 13501 of this title;

''(B) the person is the owner, lessee, or bailee of the property being transported; and

''(C) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise;

''(13) 'motor vehicle' means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service;

''(14) 'non-contiguous domestic trade' means motor-water transportation subject to jurisdiction under chapter 135 of this title involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States;

''(15) 'person', in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person;

''(16) 'State' means a State of the United States and the District of Columbia;

''(17) 'transportation' includes—

''(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

''(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, packing, and interchange of passengers and property;

''(18) 'United States' means the States of the United States and the District of Columbia;

''(19) 'vessel' means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water; and

''(20) 'water carrier' means a person providing water transportation for compensation.

''§ 13103. Remedies are cumulative

''Except as otherwise provided in this part, the remedies provided under this part are in addition to remedies existing under another law or at common law.

''CHAPTER 133—ADMINISTRATIVE PROVISIONS

''§ 13301. Powers

''(a) Except as otherwise specified, the Secretary of Transportation shall carry out this part. Enumeration of a power of the Secretary in this part does not exclude another power the Secretary may have in carrying out this part. The Secretary may prescribe regulations in carrying out this part.

''(b) The Secretary may obtain from carriers providing, and brokers for, transportation and service subject to this part, and from persons controlling, controlled by, or under common control with those carriers or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker, information the Secretary decides is necessary to carry out this part.

''(c)(1) The Secretary may subpena witnesses and records related to a proceeding under this part from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpena, the Secretary, or a party to a proceeding under this part, may petition a court of the United States to enforce that subpena.

''(2) The district courts of the United States have jurisdiction to enforce a subpena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subpena as a contempt of court.

''(d)(1) In a proceeding under this part, the Secretary may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending under this part may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

''(2) If a witness fails to be deposed or to produce records under paragraph (1) of this subsection, the Secretary may subpena the witness to take a deposition, produce the records, or both.

''(3) A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

''(4) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

''(5) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

''(6) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Secretary or agreed on by the parties by written stipulation filed with the Secretary. A deposition shall be filed with the Secretary promptly.

''(e) Each witness summoned before the Secretary or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

''(f) For those provisions of this part that are specified to be carried out by the Intermodal Surface Transportation Board, the Transportation Board shall have the same powers as the Secretary has under this section.

''§ 13302. Intervention

''Under regulations of the Secretary of Transportation, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this part related to transportation subject to jurisdiction under subchapter I of chapter 135 of this title shall be given to interested persons.

''§ 13303. Service of notice in proceedings under this part

''(a) A motor carrier, a broker, or a freight forwarder providing transportation or service subject to jurisdiction under chapter 135 of this title shall designate in writing an agent by name and post office address on whom service of notices in a proceeding before, and of actions of, the Secretary may be made.

''(b) A notice to a motor carrier, broker, or freight forwarder is served personally or by mail on the motor carrier, broker, or freight forwarder or on its designated agent. Service by mail on the designated agent is made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when the notice is served. If a motor carrier, broker, or freight forwarder does not have a designated agent, service may be made by posting a copy of the notice at the headquarters of the Department of Transportation.

"§ 13304. Service of process in court proceedings

''(a) A motor carrier or broker providing transportation subject to jurisdiction under chapter 135 of this title, including a motor carrier or broker operating within the United States while providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, shall designate an agent in each State in which it operates by name and post office address on whom process issued by a court with subject matter jurisdiction may be served in an action brought against that carrier or broker. The designation shall be in writing and filed with the Department of Transportation and each State may require that an additional designation be filed with it. If a designation under this subsection is not made, service may be made on any agent of the carrier or broker within that State.

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

"CHAPTER 135—JURISDICTION

''SUBCHAPTER I—MOTOR CARRIER TRANSPORTATION

"§ 13501. General jurisdiction

''The Secretary of Transportation and the Intermodal Surface Transportation Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier—

''(1) between a place in—

''(A) a State and a place in another State;

''(B) a State and another place in the same State through another State;

''(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

''(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

''(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

''(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

"§ 13502. Exempt transportation between Alaska and other States

''To the extent that transportation by a motor carrier between a place in Alaska and a place in another State under section 13501 of this title is provided in a foreign country—

''(1) neither the Secretary of Transportation nor the Intermodal Surface Transportation Board has jurisdiction to impose a requirement over conduct of the motor carrier in the foreign country conflicting with a requirement of that country; but

''(2) the motor carrier, as a condition of providing transportation in the United States, shall comply, with respect to all transportation provided between Alaska and the other State, with the requirements of this part related to rates and practices applicable to the transportation.

"§ 13503. Exempt motor vehicle transportation in terminal areas

''(a)(1) Neither the Secretary of Transportation nor the Intermodal Surface Transportation Board has jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

''(A) is a transfer, collection, or delivery;

''(B) is provided by—

''(i) a rail carrier subject to jurisdiction under chapter 105 of this title;

''(ii) a water carrier subject to jurisdiction under subchapter II of this chapter; or

''(iii) a freight forwarder subject to jurisdiction under subchapter III of this chapter; and

''(C) is incidental to transportation or service provided by the carrier or freight forwarder that is subject to jurisdiction under chapter 105 of this title or under subchapter II or III of this chapter.

''(2) Transportation exempt from jurisdiction under paragraph (1) of this subsection is subject to jurisdiction under chapter 105 of this title when provided by such a rail carrier, under subchapter II of this chapter when provided by such a water carrier, and under subchapter III of this chapter when provided by such a freight forwarder.

''(b)(1) Except to the extent provided by paragraph (2) of this subsection, neither the Secretary nor the Transportation Board has jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

''(A) is a transfer, collection, or delivery; and

''(B) is provided by a person as an agent or under other arrangement for—

''(i) a rail carrier subject to jurisdiction under chapter 105 of this title;

''(ii) a motor carrier subject to jurisdiction under this subchapter;

''(iii) a water carrier subject to jurisdiction under subchapter II of this chapter; or

''(iv) a freight forwarder subject to jurisdiction under subchapter III of this chapter.

''(2) Transportation exempt from jurisdiction under paragraph (1) of this subsection is considered transportation provided by the carrier or service provided by the freight forwarder for whom the transportation was provided and is subject to jurisdiction under chapter 105 of this title when provided for such a rail carrier, under this subchapter when provided for such a motor carrier, under subchapter II of this chapter when provided for such a water carrier, and under subchapter III of this chapter when provided for such a freight forwarder.

"§ 13504. Exempt motor carrier transportation entirely in one State

''Neither the Secretary of Transportation nor the Intermodal Surface Transportation Board has jurisdiction under this subchapter over transportation, except transportation of household goods, by a motor carrier operating solely within the State of Hawaii. The State of Hawaii may regulate transportation exempt from jurisdiction under this section and, to the extent provided by a motor carrier operating solely within the State of Hawaii, transportation exempt under section 13503 of this title.

''SUBCHAPTER II—WATER CARRIER TRANSPORTATION

"§ 13521. General jurisdiction

''The Transportation Board has jurisdiction over transportation insofar as water carriers are concerned—

''(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;

''(2) by water carrier and motor carrier from a place in a State to a place in another State, except that if part of the transportation is outside the United States, the Secretary only has jurisdiction over that part of the transportation provided—

''(A) by motor carrier that is in the United States; and

''(B) by water carrier that is from a place in the United States to another place in the United States; and

''(3) by water carrier or by water carrier and motor carrier between a place in the United States and a place outside the United States, to the extent that—

''(A) when the transportation is by motor carrier, the transportation is provided in the United States;

''(B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and

''(C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.

''SUBCHAPTER III—FREIGHT FORWARDER SERVICE

"§ 13531. General jurisdiction

''(a) The Secretary of Transportation and the Intermodal Surface Transportation Board have jurisdiction, as specified in this part, over service that a freight forwarder undertakes to provide, or is authorized or required under this part to provide, to the extent transportation is provided in the United States and is between—

''(1) a place in a State and a place in another State, even if part of the transportation is outside the United States;

''(2) a place in a State and another place in the same State through a place outside the State; or

''(3) a place in the United States and a place outside the United States.

''(b) Neither the Secretary nor the Transportation Board has jurisdiction under subsection (a) of this section over service undertaken by a freight forwarder using transportation of an air carrier subject to part A of subtitle VII of this title.

''SUBCHAPTER IV—AUTHORITY TO EXEMPT

"§ 13541. Authority to exempt transportation or services

''(a) In any matter subject to jurisdiction under this chapter, the Secretary of Transportation or the Intermodal Surface Transportation Board, as applicable, shall exempt a person, class of persons, or a transaction or service from the application of a provision of this title, or use this exemption authority to modify a provision of this title, when the Secretary or Transportation Board finds that the application of that provision in whole or in part—

''(1) is not necessary to carry out the transportation policy of section 13101 of this title; and

''(2) either (A) the transaction or service is of limited scope, or (B) the application of a provision of this title is not needed to protect shippers from the abuse of market power.

In a proceeding that affects the transportation of household goods described in section 13102(9)(A), the Secretary or the Transportation Board shall also consider whether the exemption will be consistent with the transportation policy set forth in section 13101 of this title and will not be detrimental to the interests of individual shippers.

''(b) The Secretary or Transportation Board, as applicable, may, where appropriate, begin a proceeding under this section on the Secretary's or Transportation Board's own initiative or on application by an interested party.

''(c) The Secretary or Transportation Board, as applicable, may specify the period of time during which an exemption granted under this section is effective.

''(d) The Secretary or Transportation Board, as applicable, may revoke an exemption, to the extent specified, on finding that application of a provision of this title to the person, class, or transportation is necessary to carry out the transportation policy of section 13101 of this title.

''(e) This exemption authority may not be used to relieve a person (except a person that would have been covered by a statutory exemption under subchapter II or IV of chapter 105 of this title that was repealed by the Interstate Commerce Commission Sunset Act of 1995) from

the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage; insurance; or safety fitness.

"CHAPTER 137—RATES AND THROUGH ROUTES

"§ 13701. Requirements for reasonable rates, classifications, through routes, rules, and practices for certain transportation

''(a)(1) A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to jurisdiction under subchapters I or III of chapter 135 of this title for transportation or service involving—

''(i) a movement of household goods described in section 13102(9)(A) of this title, or

''(ii) a joint rate for a through movement with a water carrier in non-contiguous domestic trade,

must be reasonable.

''(2) Through routes and divisions of joint rates for such transportation or service as described in paragraph (1) (i) or (ii) must be reasonable.

''(b) When the Intermodal Surface Transportation Board finds it necessary to stop or prevent a violation of subsection (a), the Transportation Board shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

"§ 13702. Tariff requirement for certain transportation

''(a) A carrier subject to jurisdiction under subchapters I or III of chapter 135 of this title may provide transportation or service that is—

''(1) under a joint rate for a through movement in non-contiguous domestic trade, or

''(2) for movement of household goods described in section 13102(9)(A) of this title,

only if the rate for such transportation or service is contained in a tariff that is in effect under this section. A rate contained in a tariff shall be stated in money of the United States. The carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

''(b)(1) A carrier providing transportation or service described in paragraph (1) of subsection (a) shall publish and file with the Intermodal Surface Transportation Board tariffs containing the rates established for such transportation or service. The Transportation Board may prescribe other information that carriers shall include in such tariffs.

''(2) Carriers that publish tariffs under this subsection shall keep them open for public inspection.

''(c) The Transportation Board shall prescribe the form and manner of publishing, filing, and keeping tariffs open for public inspection under subsection (b). The Transportation Board may prescribe specific charges to be identified in a tariff published by a carrier, but those tariffs must identify plainly—

''(1) the carriers that are parties to it;

''(2) the places between which property will be transported;

''(3) terminal charges if a carrier providing transportation or service subject to jurisdiction under subchapter III of chapter 135 of this title;

''(4) privileges given and facilities allowed; and

''(5) any rules that change, affect, or determine any part of the published rate.

''(d) The Transportation Board may permit carriers to change rates, classifications, rules, and practices without filing complete tariffs that cover matter that is not being changed when the Transportation Board finds that action to be consistent with the public interest. Those carriers may either—

''(1) publish new tariffs that incorporate changes, or

''(2) plainly indicate the proposed changes in the tariffs then in effect and kept open for public inspection.

''(e) The Transportation Board may reject a tariff submitted to it by a carrier under subsection (b) if that tariff violates this section or regulation of the Transportation Board carrying out this section.

''(f)(1) A carrier providing transportation described in subsection (a)(2) shall maintain rates and related rules and practices in a published tariff. The tariff must be available for inspection by the Transportation Board and by shippers, upon reasonable request, at the offices of the carrier and of each tariff publishing agent of the carrier.

''(2) A carrier that maintains a tariff and makes it available for inspection as provided in paragraph (1) may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff.

''(3) A carrier that maintains a tariff under this subsection is bound by the tariff except as otherwise provided in this subtitle. A carrier that does not maintain a tariff as provided in this subsection may not enforce the tariff against any individual shipper except as otherwise provided in this subtitle, and shall not transport household goods described in section 13102(9)(A).

''(4) A carrier may incorporate by reference the rates, terms, and other conditions in a tariff in agreements covering the transportation of household goods (except those household goods described in section 13102(9)(A)(i)), if the tariff is maintained as provided in this subsection and the agreement gives notice of the incorporation and of the availability of the tariff for inspection by the commercial shipper.

''(5) A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be filed with the Transportation Board.

"§ 13703. Certain collective activities; exemption from antitrust laws

''(a) AGREEMENTS.—

''(1) AUTHORITY TO ENTER.—A motor carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into an agreement with one or more such carriers to establish—

''(A) through routes and joint rates;

''(B) rates for the transportation of household goods described in section 13102(9)(A);

''(C) classifications;

''(D) mileage guides;

''(E) rules;

''(F) divisions;

''(G) rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single-line rates); or

''(H) procedures for joint consideration, initiation, or establishment of matters described in subparagraphs (A) through (G).

''(2) SUBMISSION OF AGREEMENT TO TRANSPORTATION BOARD; APPROVAL.—An agreement entered into under subsection (a) may be submitted by any carrier or carriers that are parties to such agreement to the Transportation Board for approval and may be approved by the Transportation Board only if it finds that such agreement is in the public interest.

''(3) CONDITIONS.—The Transportation Board may require compliance with reasonable conditions consistent with this part to assure that the agreement furthers the transportation policy set forth in section 13101.

''(4) INVESTIGATIONS.—The Transportation Board may suspend and investigate the reasonableness of any classification or rate adjustment of general application made pursuant to an agreement under this section.

''(5) EFFECT OF APPROVAL.—If the Transportation Board approves the agreement or renews approval of the agreement, it may be made and carried out under its terms and under the conditions required by the Transportation Board, and the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to parties and other persons with respect to making or carrying out the agreement.

''(b) RECORDS.—The Transportation Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Transportation Board, or its delegate, may inspect a record maintained under this section, or monitor any organization's compliance with this section.

''(c) REVIEW.—The Transportation Board may review an agreement approved under this section, on its own initiative or on request, and shall change the conditions of approval or terminate it when necessary to protect the public interest. Action of the Transportation Board under this section—

''(1) approving an agreement,

''(2) denying, ending, or changing approval,

''(3) prescribing the conditions on which approval is granted, or

''(4) changing those conditions,

has effect only as related to application of the antitrust laws referred to in subsection (a).

''(d) EXPIRATION OF APPROVALS; RENEWALS.—Subject to subsection (c), approval of an agreement under subsection (a) shall expire 3 years after the date of approval unless renewed under this subsection. The approval may be renewed upon request of the parties to the agreement if such parties resubmit the agreement to the Transportation Board, the agreement is unchanged, and the Transportation Board approves such renewal. The Transportation Board shall approve the renewal unless it finds that the renewal is not in the public interest.

''(e) EXISTING AGREEMENTS.—Agreements approved under former section 10706(b) and in effect on the day before the effective date of this section shall be treated for purposes of this section as approved by the Transportation Board under this section beginning on such effective date.

''(f) LIMITATIONS ON STATUTORY CONSTRUCTION.—

''(1) UNDERCHARGE CLAIMS.—Nothing in this section shall serve as a basis for any undercharge claim.

''(2) OBLIGATION OF SHIPPER.—Nothing in this title, the Interstate Commerce Commission Sunset Act of 1995, or any amendments or repeals made by such Act shall be construed as creating any obligation for a shipper based solely on a classification that was on file with the Interstate Commerce Commission or elsewhere on the day before the effective date of this section.

''(g) MILEAGE RATE LIMITATION.—No carrier subject to jurisdiction under subchapter I or III of chapter 135 of this title may enforce collection of its mileage rates or classifications unless such carrier or forwarder maintains its own independent publication of mileage or classification which can be examined by any interested person upon reasonable request or is a participant in a publication of mileages or classifications formulated under an agreement approved under this section.

''(h) SINGLE LINE RATE DEFINED.—In this section, the term 'single line rate' means a rate, charge, or allowance proposed by a single motor carrier that is applicable only over its line and for which the transportation can be provided by that carrier.

"§ 13704. Household goods rates—estimates; guarantees of service

''(a)(1) Subject to the provisions of paragraph (2) of this subsection, a motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title may establish a rate for the transportation of household goods which is based on the

carrier's written, binding estimate of charges for providing such transportation.

''(2) Any rate established under this subsection must be available on a nonpreferential basis to shippers and must not result in charges to shippers which are predatory.

''(b)(1) Subject to the provisions of paragraph (2) of this subsection, a motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title may establish rates for the transportation of household goods which guarantee that the carrier will pick up and deliver such household goods at the times specified in the contract for such services and provide a penalty or per diem payment in the event the carrier fails to pick up or deliver such household goods at the specified time. The charges, if any, for such guarantee and penalty provision may vary to reflect one or more options available to meet a particular shipper's needs.

''(2) Before a carrier may establish a rate for any service under paragraph (1) of this subsection, the Secretary of Transportation may require such carrier to have in effect and keep in effect, during any period such rate is in effect under such paragraph, a rate for such service which does not guarantee the pick up and delivery of household goods at the times specified in the contract for such services and which does not provide a penalty or per diem payment in the event the carrier fails to pick up or deliver household goods at the specified time.

''§ 13705. Requirements for through routes among motor carriers of passengers

''(a) A motor carrier of passengers shall establish through routes with other carriers of the same type and shall establish individual and joint rates applicable to them.

''(b) A through route between motor carriers providing transportation of passengers subject to jurisdiction under subchapter I of chapter 135 must be reasonable.

''(c) When the Intermodal Surface Transportation Board finds it necessary to enforce the requirements of this section, the Transportation Board may prescribe through routes and the conditions under which those routes must be operated for motor carriers providing transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

''§ 13706. Liability for payment of rates

''(a) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this section when the transportation is provided by motor carrier under this part. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—

''(1) of the agency and absence of beneficial title; and

''(2) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

''(b) When the consignee is liable only for rates billed at the time of delivery under subsection (a) of this section, the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the carrier erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

''§ 13707. Billing and collecting practices

''(a) A motor carrier subject to jurisdiction under subchapter I of chapter 135 shall disclose, when a document is presented or electronically transmitted for payment to the person responsible directly to the motor carrier for payment or agent of such responsible person, the actual rates, charges, or allowances for any transportation service. No person may cause a motor carrier to present false or misleading information on a document about the actual rate, charge, or allowance to any party to the transaction. When the actual rate, charge, or allowance is dependent upon the performance of a service by a party to the transportation arrangement, such as tendering a volume of freight over a stated period of time, the motor carrier shall indicate in any document presented for payment to the person responsible directly to the motor carrier that a reduction, allowance, or other adjustment may apply.

''(b) The Transportation Board shall promulgate regulations that prohibit a motor carrier subject to jurisdiction under subchapter II of chapter 105 of this title from providing a reduction in a rate for the provision of transportation of property to any person other than—

''(1) the person paying the motor carrier directly for the transportation service according to the bill of lading, receipt, or contract; or

''(2) an agent of the person paying for the transportation.

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

''(a) IN GENERAL.—When a claim is made by a motor carrier of property (other than a household goods carrier) providing transportation subject to jurisdiction under subchapter II of chapter 105 of this title (as in effect on the day before the effective date of this section) or subchapter I of chapter 135 of this title, by a freight forwarder (other than a household goods freight forwarder), or by a party representing such a carrier or freight forwarder regarding the collection of rates or charges for such transportation in addition to those originally billed and collected by the carrier or freight forwarder for such transportation, the person against whom the claim is made may elect to satisfy the claim under the provisions of subsection (b), (c), or (d), upon showing that—

''(1) the carrier or freight forwarder is no longer transporting property or is transporting property for the purpose of avoiding the application of this section; and

''(2) with respect to the claim—

''(A) the person was offered a transportation rate by the carrier or freight forwarder other than that legally on file at the time with the Transportation Board or with the former Interstate Commerce Commission, as required, for the transportation service;

''(B) the person tendered freight to the carrier or freight forwarder in reasonable reliance upon the offered transportation rate;

''(C) the carrier or freight forwarder did not properly or timely file with the Transportation Board or with the former Interstate Commerce Commission, as required, a tariff providing for such transportation rate or failed to enter into an agreement for contract carriage;

''(D) such transportation rate was billed and collected by the carrier or freight forwarder; and

''(E) the carrier or freight forwarder demands additional payment of a higher rate filed in a tariff.

If there is a dispute as to the showing under paragraph (1), such dispute shall be resolved by the court in which the claim is brought. If there is a dispute as to the showing under paragraph (2), such dispute shall be resolved by the Intermodal Surface Transportation Board. Pending the resolution of any such dispute, the person shall not have to pay any additional compensation to the carrier or freight forwarder. Satisfaction of the claim under subsection (b), (c), or (d) shall be binding on the parties, and the parties shall not be subject to chapter 149 of this title or chapter 119 of this title, as such chapter was in effect on the date before the date of enactment of the Interstate Commerce Commission Sunset Act of 1995.

''(b) CLAIMS INVOLVING SHIPMENTS WEIGHING 10,000 POUNDS OR LESS.—A person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim if the shipments each weighed 10,000 pounds or less, by payment of 20 percent of the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Transportation Board .

''(c) CLAIMS INVOLVING SHIPMENTS WEIGHING MORE THAN 10,000 POUNDS.—A person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim if the shipments each weighed more than 10,000 pounds, by payment of 15 percent of the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Transportation Board.

''(d) CLAIMS INVOLVING PUBLIC WAREHOUSEMEN.—Notwithstanding subsections (b) and (c), a person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim by payment of 5 percent of the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid if such person is a public warehouseman. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Transportation Board.

''(e) EFFECTS OF ELECTION.—When a person from whom additional legally applicable freight rates or charges are sought does not elect to use the provisions of subsection (b), (c) or (d), the person may pursue all rights and remedies existing under this part or, for transportation provided before the effective date of this section, all rights and remedies that existed under this title on the day before the date of enactment of the Interstate Commerce Commission Sunset Act of 1995.

''(f) STAY OF ADDITIONAL COMPENSATION.—When a person proceeds under this section to challenge the reasonableness of the legally applicable freight rate or charges being claimed by a carrier or freight forwarder described in subsection (a) in addition to those already billed and collected, the person shall not have to pay any additional compensation to the carrier or freight forwarder until the Transportation Board has made a determination as to the reasonableness of the challenged rate as applied to the freight of the person against whom the claim is made.

''(g) NOTIFICATION OF ELECTION.—

''(1) GENERAL RULE.—A person must notify the carrier or freight forwarder as to its election to proceed under subsection (b), (c), or (d). Except as provided in paragraphs (2), (3), and (4), such election may be made at any time.

''(2) DEMANDS FOR PAYMENT INITIALLY MADE AFTER DECEMBER 3, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder initially demands the payment of additional freight charges after December 3, 1993, and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f) at the time of the making of such initial demand, the election must be made not later than the later of—

''(A) the 60th day following the filing of an answer to a suit for the collection of such additional legally applicable freight rate or charges, or

''(B) March 5, 1994.

''(3) PENDING SUITS FOR COLLECTION MADE BEFORE DECEMBER 4, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has filed, before December 4, 1993, a suit for the collection of additional freight charges and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f), the election must be made not later than the 90th day following the date on which such notification is received.

''(4) DEMANDS FOR PAYMENT MADE BEFORE DECEMBER 4, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has demanded the payment of additional freight charges, and has not filed a suit for the collection of such additional freight charges, before December 4, 1993, and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f), the election must be made not later than the later of—

''(A) the 60th day following the filing of an answer to a suit for the collection of such additional legally applicable freight rate or charges, or

''(B) March 5, 1994.

''(h) CLAIMS INVOLVING SMALL-BUSINESS CONCERNS, CHARITABLE ORGANIZATIONS, AND RECYCLABLE MATERIALS.—Notwithstanding subsections (b), (c), and (d), a person from whom the additional legally applicable and effective tariff rate or charges are sought shall not be liable for the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid—

''(1) if such person qualifies as a small-business concern under the Small Business Act (15 U.S.C. 631 et seq.),

''(2) if such person is an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, or

''(3) if the cargo involved in the claim is recyclable materials. In this provision, 'recyclable materials' means waste products for recycling or reuse in the furtherance of recognized pollution control programs.

"§ 13709. Additional motor carrier undercharge provisions

''(a)(1) A motor carrier of property (other than a motor carrier providing transportation in noncontiguous domestic trade) shall provide to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices, upon which any rate agreed to between the shipper and carrier may have been based.

''(2) In those cases where a motor carrier (other than a motor carrier providing transportation of household goods or in noncontiguous domestic trade) seeks to collect charges in addition to those billed and collected which are contested by the payor, the carrier may request that the Transportation Board determine whether any additional charges over those billed and collected must be paid. A carrier must issue any bill for charges in addition to those originally billed within 180 days of the receipt of the original bill in order to have the right to collect such charges.

''(3) If a shipper seeks to contest the charges originally billed, the shipper may request that the Transportation Board determine whether the charges originally billed must be paid. A shipper must contest the original bill within 180 days in order to have the right to contest such charges.

''(4) Any tariff on file with the Interstate Commerce Commission on August 26, 1994, not required to be filed after that date is null and void beginning on that date. Any tariff on file with the Interstate Commerce Commission on the effective date of the Interstate Commerce Commission Sunset Act of 1995 not required to be filed after that date is null and void beginning on that date.

''(b) If a motor carrier (other than a motor carrier providing transportation of household goods) subject to jurisdiction under subchapter I of chapter 135 of this title had authority to provide transportation as both a motor common carrier and a motor contract carrier and a dispute arises as to whether certain transportation that was provided prior to the effective date of the Interstate Commerce Commission Sunset Act of 1995 was provided in its common carrier or contract carrier capacity and the parties are not able to resolve the dispute consensually, the Transportation Board shall resolve the dispute.

"§ 13710. Alternative Procedure for Resolving Undercharge Disputes

''(a) GENERAL RULE.—It shall be an unreasonable practice for a motor carrier of property (other than a household goods carrier) providing transportation that is subject to jurisdiction of subchapter I of chapter 135 of this title or was subject to jurisdiction under subchapter II of chapter 105 of this title, a freight forwarder (other than a household goods freight forwarder), or a party representing such a carrier or freight forwarder to attempt to charge or to charge for a transportation service the difference between—

''(1) the applicable rate that was lawfully in effect pursuant to a tariff that was filed in accordance with this chapter, or with respect to transportation provided before the effective date of this section in accordance with chapter 107 of this title as in effect on the date the transportation service was provided by the carrier or freight forwarder applicable to such transportation service; and

''(2) the negotiated rate for such transportation service if the carrier or freight forwarder is no longer transporting property between places described in section 13501(1) of this title or is transporting property between places described in section 13501(1) of this title for the purpose of avoiding the application of this section.

''(b) JURISDICTION OF TRANSPORTATION BOARD.—The Intermodal Surface Transportation Board shall have jurisdiction to make a determination of whether or not attempting to charge or the charging of a rate by a motor carrier or freight forwarder or party representing a motor carrier or freight forwarder is an unreasonable practice under subsection (a). If the Transportation Board determines that attempting to charge or the charging of the rate is an unreasonable practice under subsection (a), the carrier, freight forwarder, or party may not collect the difference described in subsection (a) between the applicable rate and the negotiated rate for the transportation service. In making such determination, the Transportation Board shall consider—

''(1) whether the person was offered a transportation rate by the carrier or freight forwarder or party other than that legally on file with the Transportation Board or with the Interstate Commerce Commission, as required, at the time of the movement for the transportation service;

''(2) whether the person tendered freight to the carrier or freight forwarder in reasonable reliance upon the offered transportation rate;

''(3) whether the carrier or freight forwarder did not properly or timely file with the Transportation Board or with the Interstate Commerce Commission, as required, a tariff providing for such transportation rate or failed to enter into an agreement for contract carriage;

''(4) whether the transportation rate was billed and collected by the carrier or freight forwarder; and

''(5) whether the carrier or freight forwarder or party demands additional payment of a higher rate filed in a tariff.

''(c) STAY OF ADDITIONAL COMPENSATION.—When a person proceeds under this section to challenge the reasonableness of the practice of a motor carrier, freight forwarder, or party described in subsection (a) to attempt to charge or to charge the difference described in subsection (a) between the applicable rate and the negotiated rate for the transportation service in addition to those charges already billed and collected for the transportation service, the person shall not have to pay any additional compensation to the carrier, freight forwarder, or party until the Transportation Board has made a determination as to the reasonableness of the practice as applied to the freight of the person against whom the claim is made.

''(d) TREATMENT.—Subsection (a) is an exception to the requirements of section 13702, and for transportation prior to the effective date of the Interstate Commerce Commission Sunset Act of 1995, to the requirements of sections 10761(a) and 10762 of this title as in effect on the date before the date of enactment of the Interstate Commerce Commission Sunset Act of 1995, relating to a filed tariff rate and other general tariff requirements.

''(e) NONAPPLICABILITY OF NEGOTIATED RATE DISPUTE RESOLUTION PROCEDURE.—If a person elects to seek enforcement of subsection (a) with respect to a rate for a transportation or service, section 13708 of this part shall not apply to such rate.

''(f) DEFINITIONS.—For purposes of this section, the term 'negotiated rate' means a rate, charge, classification, or rule agreed upon by a motor carrier or freight forwarder and a shipper through negotiations pursuant to which no tariff was lawfully and timely filed and for which there is written evidence of such agreement.

"§ 13711. Government traffic

''A carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

"§ 13712. Food and grocery transportation

''(a) CERTAIN COMPENSATION PROHIBITED.—Notwithstanding any other provision of law, it shall not be unlawful for a seller of food and grocery products using a uniform zone delivered pricing system to compensate a customer who picks up purchased food and grocery products at the shipping point of the seller if such compensation is available to all customers of the seller on a nondiscriminatory basis and does not exceed the actual cost to the seller of delivery to such customer.

''(b) SENSE OF CONGRESS.—It is the sense of the Congress that any savings accruing to a customer by reason of compensation permitted by subsection (a) of this section should be passed on to the ultimate consumer.

"CHAPTER 139—REGISTRATION

"§ 13901. Requirement for registration

''A person may provide transportation or service subject to jurisdiction under subchapter I or III of chapter 135 of this title or be a broker for transportation subject to jurisdiction under subchapter I of that chapter, only if the person is currently registered under this chapter to provide the transportation or service.

"§ 13902. Registration of motor carriers

''(a)(1) Except as provided in this section, the Secretary of Transportation shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

''(A) this part, the applicable regulations of the Secretary and the Intermodal Surface

Transportation Board, and any safety requirements imposed by the Secretary,

''(B) the safety fitness requirements established by the Secretary under section 31144 of this title, and

''(C) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31128 of this title.

''(2) The Secretary shall consider and, to the extent applicable, make findings on, any evidence demonstrating that the registrant is unable to comply with the requirements of subparagraph (A), (B), or (C) of paragraph (1).

''(3) The Secretary shall find any registrant as a motor carrier under this section to be unfit if the registrant does not meet the fitness requirements under paragraph (1) of this subsection and shall withhold registration.

''(4) The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Transportation Board, the safety requirements of the Secretary, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of this subsection.

''(b) MOTOR CARRIERS OF PASSENGERS.—

''(1) REGISTRATION OF PRIVATE RECIPIENTS OF GOVERNMENT ASSISTANCE.—The Secretary shall register under subsection (a)(1) a private recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

''(2) REGISTRATION OF PUBLIC RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—

''(A) CHARTER TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that—

''(i) the recipient meets the requirements of subsection (a)(1); and

''(ii)(I) no motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing to provide, the transportation; or

''(II) the transportation is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

''(B) REGULAR-ROUTE TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide regular-route transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

''(C) TREATMENT OF CERTAIN PUBLIC RECIPIENTS.—Any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall, for purposes of this part, be treated as a person which is providing or seeking to provide transportation of passengers subject to such jurisdiction.

''(3) INTRASTATE TRANSPORTATION BY INTERSTATE CARRIERS.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

''(4) JURISDICTION OVER CERTAIN INTRASTATE TRANSPORTATION.—Any intrastate transportation authorized under this subsection, except as provided in section 14501, shall be deemed to be transportation subject to jurisdiction under subchapter I of chapter 135 of this title until such time, not later than 30 days after the date on which a motor carrier of passengers first begins providing transportation entirely in one State pursuant to this paragraph, as the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation.

''(5) SPECIAL OPERATIONS.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

''(6) REVOCATION OF AUTHORITY FOR INTRASTATE TRANSPORTATION.—Notwithstanding paragraph (3) of this subsection, intrastate transportation authorized under this subsection may be suspended or revoked by the Secretary under section 13905 of this title at any time.

''(7) PREEMPTION OF STATE REGULATION.—No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and, if a city within the commercial zone, is served by a motor carrier of passengers providing regular-route transportation of passengers subject to jurisdiction under subchapter I of chapter 135 of this title.

''(8) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) PUBLIC RECIPIENT OF GOVERNMENTAL ASSISTANCE.—The term 'public recipient of governmental assistance' means—

''(i) any State,

''(ii) any municipality or other political subdivision of a State,

''(iii) any public agency or instrumentality of one or more states and municipalities and political subdivisions of a State,

''(iv) any Indian tribe,

''(v) any corporation, board, or other person owned or controlled by any entity described in clause (i), (ii), (iii), or (iv), and

which, before, on, or after the effective date of this subsection received governmental assistance for the purchase or operation of any bus.

''(B) PRIVATE RECIPIENT OF GOVERNMENT ASSISTANCE.—The term 'private recipient of government assistance' means any person (other than a person described in subparagraph (A)) who before, on or after the effective date of this paragraph received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

''(c) RESTRICTIONS ON MOTOR CARRIERS DOMICILED IN OR OWNED OR CONTROLLED BY NATIONALS OF A CONTIGUOUS FOREIGN COUNTRY.—

''(1) If the President of the United States, or his or her delegate, determines that an act, policy, or practice of a foreign country contiguous to the United States, or any political subdivision or any instrumentality of any such country is unreasonable or discriminatory and burdens or restricts United States transportation companies providing, or seeking to provide, motor carrier transportation of property or passengers to, from, or within such foreign country, the President, or his or her delegate, may—

''(A) seek elimination of such practices through consultations; or

''(B) notwithstanding any other provision of law, suspend, modify, amend, condition, or restrict operations, including geographical restriction of operations, in the United States by motor carriers of property or passengers domiciled in such foreign country or owned or controlled by persons of such foreign country.

''(2) Any action taken under paragraph (1)(A) to eliminate an act, policy, or practice shall be so devised so as to equal to the extent possible the burdens or restrictions imposed by such foreign country on United States transportation companies.

''(3) The President, or his or her delegate, may remove or modify in whole or in part any action taken under paragraph (1)(A) if the President, or his or her delegate, determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.

''(4) Unless and until the President or his or her delegate makes a determination under paragraphs (1) or (3) above, nothing in this subsection shall affect—

''(A) operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country permitted in the commercial zones along the U.S.-Mexico border as defined at the time of enactment of the Interstate Commerce Commission Sunset Act of 1995; or

''(B) any existing restrictions on operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country or any modifications thereof pursuant to section 6 of the Bus Regulatory Reform Act of 1982.

''(5) Unless the President, or his or her delegate, determines that expeditious action is required, the President shall publish in the Federal Register any determination under paragraphs (1) or (3) together with a description of the facts on which such a determination is based and any proposed action to be taken pursuant to paragraphs (1)(B) or (3) and provide an opportunity for public comments.

''(6) The President may delegate any or all authority under this subsection to the Secretary of Transportation, who shall consult with other agencies as appropriate. In accordance with the directions of the President, the Secretary of Transportation may issue regulations to enforce this subsection.

''(7) Either the Secretary of Transportation or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

''(8) This subsection shall not affect the requirement for all foreign motor carriers and foreign motor private carriers operating in the United States to fully comply with all applicable laws and regulations pertaining to fitness; safety of operations; financial responsibility; and taxes imposed by section 4481 of the Internal Revenue Code of 1994.

''§ 13903. Registration of freight forwarders

''(a) The Secretary of Transportation shall register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder, if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Intermodal Surface Transportation Board.

''(b) The freight forwarder may provide transportation as the carrier itself only if the freight forwarder also has been registered to provide transportation as a carrier under this chapter.

''§ 13904. Registration of motor carrier brokers

''(a) The Secretary of Transportation shall register, subject to section 13906(b) of this title, a person to be a broker for transportation of property subject to jurisdiction under subchapter I of chapter 135 of this title, if the Secretary finds that the person is fit, willing, and

able to be a broker for transportation and to comply with this part and applicable regulations of the Secretary .

''(b)(1) The broker may provide the transportation itself only if the broker also has been registered to provide the transportation under this chapter.

''(2) This subsection does not apply to a motor carrier registered under this chapter or to an employee or agent of the motor carrier to the extent the transportation is to be provided entirely by the motor carrier, with other registered motor carriers, or with rail or water carriers.

''(c) Regulations of the Secretary shall provide for the protection of shippers by motor vehicle, to be observed by brokers.

''(d) The Secretary may impose on brokers for motor carriers of passengers such requirements for bonds or insurance or both as the Secretary determines are needed to protect passengers and carriers dealing with such brokers.

''§ 13905. Effective periods of registration

''(a) Each registration under section 13902, 13903, or 13904 of this title is effective from the date specified by the Secretary of Transportation and remains in effect for a period of 5 years except as otherwise provided in this section or in section 13906. The Secretary may require any carrier or registrant to provide periodic updating of carrier information.

''(b) On application of the holder, the Secretary may amend or revoke a registration. On complaint or on the Secretary's own initiative and after notice and an opportunity for a proceeding, the Secretary may suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with this part, an applicable regulation or order of the Secretary or of the Intermodal Surface Transportation Board, or a condition of its registration.

''(c)(1) Except on application of the holder, the Secretary may revoke a registration of a motor carrier, freight forwarder, or broker, only after the Secretary has issued an order to the holder under section 14701 of this title requiring compliance with this part, a regulation of the Secretary, or a condition of the registration of the holder, and the holder willfully does not comply with the order.

''(2) The Secretary may act under paragraph (1) of this subsection only after giving the holder of the registration at least 30 days to comply with the order.

''(d)(1) Without regard to subchapter II of chapter 5 of title 5, the Secretary may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with safety requirements of the Secretary or the safety fitness requirements pursuant to section 13904(c), 13906, or 31144, of this title, or an order or regulation of the Secretary prescribed under those sections.

''(2) Without regard to subchapter II of chapter 5 of title 5, the Secretary may suspend a registration of a motor carrier of passengers if the Secretary finds that such carrier is conducting unsafe operations which are an imminent hazard to public health or property.

''(3) The Secretary may suspend the registration only after giving notice of the suspension to the holder. The suspension remains in effect until the holder complies with those applicable sections or, in the case of a suspension under paragraph (2) of this subsection, until the Secretary revokes such suspension.

''§ 13906. Security of motor carriers, brokers, and freight forwarders

''(a)(1) The Secretary of Transportation may register a motor carrier under section 13902 only if the registering carrier (including a foreign motor carrier, and a foreign motor private carrier) files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes pursuant to, or as is required by, sections 31138 and 31139 of this title, and the laws of the State or States in which the carrier is operating, to the extent applicable. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the carrier for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property (except property referred to in paragraph (3) of this subsection), or both. A registration remains in effect only as long as the carrier continues to satisfy the security requirements of this paragraph.

''(2) A motor carrier and a foreign motor private carrier and foreign motor carrier operating in the United States (when providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country) shall comply with the requirements of sections 13303 and 13304. To protect the public, the Secretary may require any such motor carrier to file the type of security that a motor carrier is required to file under paragraph (1) of this subsection.

''(3) The Secretary may require a registered motor carrier to file with the Secretary a type of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor carrier as the result of transportation provided under this part. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

''(b) The Secretary may register a person as a broker under section 13904 of this title only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary to ensure that the transportation for which a broker arranges is provided. The registration remains in effect only as long as the broker continues to satisfy the security requirements of this subsection.

''(c)(1) The Secretary may register a person as a freight forwarder under section 13903 of this title only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the freight forwarder for bodily injury to, or death of, an individual, or loss of, or damage to, property (other than property referred to in paragraph (2) of this subsection), resulting from the negligent operation, maintenance, or use of motor vehicles by or under the direction and control of the freight forwarder when providing transfer, collection, or delivery service under this part.

''(2) The Secretary may require a registered freight forwarder to file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary sufficient to pay, not more than the amount of the security, for loss of, or damage to, property for which the freight forwarder provides service.

''(3) The freight forwarder's registration remains in effect only as long as the freight forwarder continues to satisfy the security requirements of this subsection.

''(d) The Secretary may determine the type and amount of security filed under this section. A motor carrier may submit proof of qualifications as a self-insurer to satisfy the security requirements of this section. The Secretary shall adopt regulations governing the standards for approval as a self-insurer. Motor carriers which have been granted authority to self-insure as of the date of enactment of the Interstate Commerce Commission Sunset Act of 1995 shall retain that authority unless, for good cause shown and after notice and an opportunity for a hearing, the Secretary finds that the authority must be revoked.

''(e) The Secretary shall promulgate regulations requiring the submission to the Secretary of notices of insurance cancellation sufficiently in advance of actual cancellation so as to enable the Secretary to promptly revoke the registration of any carrier or broker after the effective date of the cancellation. The Secretary shall also prescribe the appropriate form of endorsement to be appended to policies of insurance and surety bonds which will subject the insurance policy or surety bond to the full security limits of the coverage required under this section.

''§ 13907. Household goods agents

''(a) Each motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title shall be responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services (including accessorial or terminal services) subject to jurisdiction under subchapter I of chapter 135 of this title and which are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier.

''(b) Each motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title shall use due diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services) and to fulfill the obligations imposed upon them by this part and by such carrier.

''(c)(1) Whenever the Secretary of Transportation has reason to believe from a complaint or investigation that an agent providing household goods transportation services (including accessorial and terminal services) under the authority of a motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title has violated section 14901(e) or 14912 of this title or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), the Secretary may issue to such agent a complaint stating the charges and containing notice of the time and place of a hearing which shall be held no later than 60 days after service of the complaint to such agent.

''(2) Such agent shall have the right to appear at such hearing and rebut the charges contained in the complaint.

''(3) If such person does not appear at the hearing or if the Secretary finds that the agent has violated section 14901(e) or 14912 of this title or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), the Secretary may issue an order to compel compliance with the requirement that the agent be fit, willing, and able. Thereafter, the Secretary may issue an order to limit, condition, or prohibit such agent from any involvement in the transportation or provision of services incidental to the transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title if, after notice and an opportunity for a hearing, the Secretary finds that such agent, within a reasonable time after the date of issuance of a compliance order under this section, but in no event less than 30 days after such date of issuance, has willfully failed to comply with such order.

''(4) Upon filing of a petition with the Secretary by an agent who is the subject of an order issued pursuant to the second sentence of paragraph (3) of this subsection and after notice, a hearing shall be held with an opportunity to be heard. At such hearing, a determination shall be made whether the order issued pursuant to paragraph (3) of this subsection should be rescinded.

''(5) Any agent adversely affected or aggrieved by an order of the Secretary issued under this subsection may seek relief in the appropriate

United States court of appeals as provided by and in the manner prescribed in chapter 158 of title 28, United States Code.

''(d) The antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to discussions or agreements between a motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title and its agents (whether or not an agent is also a carrier) related solely to (1) rates for the transportation of household goods under the authority of the principal carrier, (2) accessorial, terminal, storage, or other charges for services incidental to the transportation of household goods transported under the authority of the principal carrier, (3) allowances relating to transportation of household goods under the authority of the principal carrier, and (4) ownership of a motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title by an agent or membership on the board of directors of any such motor carrier by an agent.

''§ 13908. Registration and other reforms

''(a) IN GENERAL.—Within 18 months after the date of enactment of the Interstate Commerce Commission Sunset Act of 1995, the Secretary, in cooperation with the States, industry groups, and other interested parties shall conduct a study to determine whether, and to what extent, the current Department of Transportation identification number system, the single State registration system under section 14505, the registration system contained in this chapter, and the financial responsibility information system under section 13906, should be modified or replaced with a single, on-line Federal system.

''(b) FACTORS TO BE CONSIDERED.—In conducting the rulemaking under subsection (a), the Secretary shall, at a minimum, consider the following factors:

''(1) Funding for State enforcement of motor carrier safety regulations.

''(2) Whether the existing single State registration system is duplicative and burdensome.

''(3) The justification and need for collecting the statutory fee for such system under section 145-5(c)(2)(B)(iv).

''(4) The public safety.

''(5) The efficient delivery of transportation services.

''(6) How, and under what conditions, to extend the registration system to motor private carriers and to carriers exempt under sections 13502, 13503, and 13506.

''(c) FEE SYSTEM.—The Secretary may consider whether to establish, under section 9701 of title 31, a fee system for registration and filing evidence of financial responsibility under the new system under subsection (a).

''(d) DEADLINE.—The Secretary shall conclude the study under this section within 18 months and report to Congress on the findings, together with recommendations for any appropriate legislative changes that may be needed.

''CHAPTER 141—OPERATIONS OF CARRIERS

''SUBCHAPTER I—GENERAL REQUIREMENTS

''§ 14101. Providing transportation and service

''(a) A carrier providing transportation or service subject to jurisdiction under chapter 135 of this title shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

''(b) A carrier providing transportation or service subject to jurisdiction under chapter 135 of this title may enter into a contract with a shipper, other than a shipper of household goods described in section 13102(9)(A), to provide specified services under specified rates and conditions. If the shipper and carrier in writing expressly waives any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under that contract shall not be subject to those provisions of this part, and may not be subsequently challenged on the ground that it violates such provision. The parties may not waive the provisions governing registration, insurance, or safety fitness. The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

''§ 14102. Leased motor vehicles

''(a) The Secretary of Transportation may require a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 of this title that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

''(1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;

''(2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;

''(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

''(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

''(b) The Secretary shall require, by regulation, that any arrangement, between a motor carrier of property providing transportation subject to jurisdiction under subchapter I of chapter 135 of this title and any other person, under which such other person is to provide any portion of such transportation by a motor vehicle not owned by the carrier shall specify, in writing, who is responsible for loading and unloading the property onto and from the motor vehicle.

''§ 14103. Loading and unloading motor vehicles

''(a) Whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle transporting property in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135 of this title) be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the person or persons providing such assistance.

''(b) It shall be unlawful to coerce or attempt to coerce any person providing transportation of property by motor vehicle for compensation in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135 of this title) to load or unload any part of such property onto or from such vehicle or to employ or pay one or more persons to load or unload any part of such property onto or from such vehicle, except that this subsection shall not be construed as making unlawful any activity which is not unlawful under the National Labor Relations Act or the Act of March 23, 1932 (47 Stat. 70; 29 U.S.C. 101 et seq.), commonly known as the Norris-LaGuardia Act.

''§ 14104. Household goods carrier operations

''(a)(1) The Secretary of Transportation may issue regulations, including regulations protecting individual shippers, in order to carry out this part with respect to the transportation of household goods by motor carriers subject to jurisdiction under subchapter I of chapter 135 of this title. The regulations and paperwork required of motor carriers providing transportation of household goods shall be minimized to the maximum extent feasible consistent with the protection of individual shippers.

''(2) Regulations of the Secretary protecting individual shippers shall include, where appropriate, reasonable performance standards for the transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title. In establishing performance standards under this paragraph, the Secretary shall take into account at least the following:

''(A) The level of performance that can be achieved by a well-managed motor carrier transporting household goods.

''(B) The degree of harm to individual shippers which could result from a violation of the regulation.

''(C) The need to set the level of performance at a level sufficient to deter abuses which result in harm to consumers and violations of regulations.

''(D) Service requirements of the carriers.

''(E) The cost of compliance in relation to the consumer benefits to be achieved from such compliance.

''(F) The need to set the level of performance at a level designed to encourage carriers to offer service responsive to shipper needs.

''(3) Nothing in this section shall be construed to limit the Secretary's authority to require reports from motor carriers providing transportation of household goods or to require such carriers to provide specified information to consumers concerning their past performance.

''(b)(1) Every motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title may, upon request of a prospective shipper, provide the shipper with an estimate of charges for transportation of household goods and for the proposed services. The Secretary shall not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and proposed services.

''(2) Any charge for an estimate of charges provided by a motor carrier to a shipper for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title shall be subject to the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12).

''(c) The Secretary shall issue regulations that provide motor carriers providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title with the maximum possible flexibility in weighing shipments, consistent with assurance to the shipper of accurate weighing practices. The Secretary shall not prohibit such carriers from backweighing shipments or from basing their charges on the reweigh weights if the shipper observes both the tare and gross weighings (or, prior to such weighings, waives in writing the opportunity to observe such weighings) and such weighings are performed on the same scale.

''SUBCHAPTER II—REPORTS AND RECORDS

''§ 14121. Definitions

''In this subchapter—

''(1) 'carrier' and 'broker' include a receiver or trustee of a carrier and broker, respectively.

''(2) 'association' means an organization maintained by or in the interest of a group of carriers or brokers providing transportation or service subject to jurisdiction under chapter 135 of this title that performs a service, or engages in activities, related to transportation under this part.

''§ 14122. Records: form; inspection; preservation

''(a) The Secretary of Transportation or the Intermodal Surface Transportation Board, as applicable, may prescribe the form of records required to be prepared or compiled under this subchapter by carriers and brokers, including records related to movement of traffic and receipts and expenditures of money.

''(b) The Secretary or Transportation Board, or an employee designated by the Secretary or Transportation Board, may on demand and display of proper credentials—

''(1) inspect and examine the lands, buildings, and equipment of a carrier or broker; and

''(2) inspect and copy any record of—

''(A) a carrier, broker, or association; and

''(B) a person controlling, controlled by, or under common control with a carrier if the Secretary or Transportation Board, as applicable, considers inspection relevant to that person's relation to, or transaction with, that carrier.

''(c) The Secretary or Transportation Board, as applicable, may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers.

''§ 14123. Reports by carriers, brokers, and associations

''(a) The Secretary—

''(1) shall require class I and class II motor carriers (as defined by the Secretary) to file annual reports with the Secretary, including a detailed balance sheet and income statement, information related to the ownership or lease of equipment operated by the motor carrier, and data related to the movement of traffic and safety performance, the form and substance of which shall be prescribed by the Secretary and may vary for different classes of motor carriers;

''(2) may require carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations; and

''(3) shall have the authority upon good cause shown to exempt any party from the financial reporting requirements prescribed by subsection (a)(1) or (a)(2).

''(b) Any request for exemption under paragraph (3) of subsection (a) must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available. Exemptions shall only be granted for one-year periods.''.

''(c) The Intermodal Surface Transportation Board may require carriers to file special reports containing information needed by the Transportation Board.

''CHAPTER 143—FINANCE

''§ 14301. Security interests in certain motor vehicles

''(a) In this section—

''(1) 'motor vehicle' means a truck of rated capacity (gross vehicle weight) of at least 10,000 pounds, a highway tractor of rated capacity (gross combination weight) of at least 10,000 pounds, a property-carrying trailer or semitrailer with at least one load-carrying axle of at least 10,000 pounds, or a motor bus with a seating capacity of at least 10 individuals.

''(2) 'lien creditor' means a creditor having a lien on a motor vehicle and includes an assignee for benefit of creditors from the date of assignment, a trustee in a case under title 11 from the date of filing of the petition in that case, and a receiver in equity from the date of appointment of the receiver.

''(3) 'security interest' means an interest (including an interest established by a conditional sales contract, mortgage, equipment trust, or other lien or title retention contract, or lease) in a motor vehicle when the interest secures payment or performance of an obligation.

''(4) 'perfection', as related to a security interest, means taking action (including public filing, recording, notation on a certificate of title, and possession of collateral by the secured party), or the existence of facts, required under law to make a security interest enforceable against general creditors and subsequent lien creditors of a debtor, but does not include compliance with requirements related only to the establishment of a valid security interest between the debtor and the secured party.

''(b) A security interest in a motor vehicle owned by, or in the possession and use of, a carrier registered under section 13902 of this title and owing payment or performance of an obligation secured by that security interest is perfected in all jurisdictions against all general, and subsequent lien, creditors of, and all persons taking a motor vehicle by sale (or taking or retaining a security interest in a motor vehicle) from, that carrier when—

''(1) a certificate of title is issued for a motor vehicle under a law of a jurisdiction that requires or permits indication, on a certificate or title, of a security interest in the motor vehicle if the security interest is indicated on the certificate;

''(2) a certificate of title has not been issued and the law of the State where the principal place of business of that carrier is located requires or permits public filing or recording of, or in relation to, that security interest if there has been such a public filing or recording; and

''(3) a certificate of title has not been issued and the security interest cannot be perfected under paragraph (2) of this subsection, if the security interest has been perfected under the law (including the conflict of laws rules) of the State where the principal place of business of that carrier is located.

''§ 14302. Pooling and division of transportation or earnings

''(a) A carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 of this title may not agree or combine with another such carrier to pool or divide traffic or services or any part of their earnings without the approval of the Intermodal Surface Transportation Board under this section.

''(b) The Transportation Board may approve and authorize an agreement or combination between or among motor carriers of passengers, or between a motor carrier of passengers and a rail carrier of passengers, if the carriers involved assent to the pooling or division and the Transportation Board finds that a pooling or division of traffic, services, or earnings—

''(1) will be in the interest of better service to the public or of economy of operation; and

''(2) will not unreasonably restrain competition.

''(c)(1) Any motor carrier of property may apply to the Transportation Board for approval of an agreement or combination with another such carrier to pool or divide traffic or any services or any part of their earnings by filing such agreement or combination with the Transportation Board not less than 50 days before its effective date. Prior to the effective date of the agreement or combination, the Transportation Board shall determine whether the agreement or combination is of major transportation importance and whether there is substantial likelihood that the agreement or combination will unduly restrain competition. If the Transportation Board determines that neither of these two factors exists, it shall, prior to such effective date and without a hearing, approve and authorize the agreement or combination, under such rules and regulations as the Transportation Board may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Transportation Board to be just and reasonable. If the Transportation Board determines either that the agreement or combination is of major transportation importance or that there is substantial likelihood that the agreement or combination will unduly restrain competition, the Transportation Board shall hold a hearing concerning whether the agreement or combination will be in the interest of better service to the public or of economy in operation and whether it will unduly restrain competition and shall suspend operation of such agreement or combination pending such hearing and final decision thereon. After such hearing, the Transportation Board shall indicate to what extent it finds that the agreement or combination will be in the interest of better service to the public or of economy in operation and will not unduly restrain competition and if assented to by all the carriers involved, shall to that extent, approve and authorize the agreement or combination, under such rules and regulations as the Transportation Board may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Transportation Board to be just and reasonable.

''(2) In the case of an application for Transportation Board approval of an agreement or combination between a motor carrier providing transportation of household goods and its agents to pool or divide traffic or services or any part of their earnings, such agreement or combination shall be presumed to be in the interest of better service to the public and of economy in operation and not to restrain competition unduly if the practices proposed to be carried out under such agreement or combination are the same as or similar to practices carried out under agreements and combinations between motor carriers providing transportation of household goods to pool or divide traffic or service of any part of their earnings approved by the Interstate Commerce Commission before the date of enactment of the Interstate Commerce Commission Sunset Act of 1995.

''(3) The Transportation Board shall streamline, simplify, and expedite, to the maximum extent practicable, the process (including, but not limited to, any paperwork) for submission and approval of applications under this section for agreements and combinations between motor carriers providing transportation of household goods and their agents.

''(d) The Transportation Board may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the carriers.

''(e) The Transportation Board may begin a proceeding under this section on its own initiative or on application.

''(f) A carrier may participate in an arrangement approved by or exempted by the Transportation Board under this section without the approval of any other federal, State, or municipal body. A carrier participating in an approved or exempted arrangement is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the arrangement.

''(g) Any agreements in operation under the provisions of this title on the date of enactment of the Interstate Commerce Commission Sunset Act of 1995 that are succeeded by this section shall remain in effect until further order of the Transportation Board.

''§ 14303. Consolidation, merger, and acquisition of control of motor carriers of passengers

''(a) APPROVAL REQUIRED.—The following transactions involving motor carriers of passengers subject to jurisdiction under subchapter I of chapter 135 of this title may be carried out only with the approval of the Intermodal Surface Transportation Board:

''(1) Consolidation or merger of the properties or franchises of at least 2 carriers into one operation for the ownership, management, and operation of the previously separately owned properties.

''(2) A purchase, lease, or contract to operate property of another carrier by any number of carriers.

''(3) Acquisition of control of a carrier by any number of carriers.

''(4) Acquisition of control of at least 2 carriers by a person that is not a carrier.

''(5) Acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers.

''(b) The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board shall consider at least the following:

''(1) The effect of the proposed transaction on the adequacy of transportation to the public.

''(2) The total fixed charges that result from the proposed transaction.

''(3) The interest of carrier employees affected by the proposed transaction.

The Board may impose conditions governing the transaction.

''(c) Within 30 days after an application is filed under this section, the Board shall either publish a notice of the application in the Federal Register or (2) reject the application if it is incomplete.

''(d) Written comments about an application may be filed with the Board within 45 days after notice of the application is published under subsection (c).

''(e) The Board shall conclude evidentiary proceedings by the 240th day after notice of the application is published under subsection (c). The Board shall issue a final decision by the 180th day after the conclusion of the evidentiary proceedings. The Board may extend a time period under this subsection, except that the total of all such extensions with respect to any application shall not exceed 90 days.

''(f) A carrier or corporation participating in or resulting from a transaction approved by the Board under this section, or exempted by the Board from the application of this section pursuant to section 13541, may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.

''(g) This section shall not apply to transactions involving carriers whose aggregate gross operating revenues were not more than $2,000,000 during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties.

"CHAPTER 145—FEDERAL-STATE RELATIONS

"§ 14501. Federal authority over intrastate transportation

''(a) MOTOR CARRIERS OF PASSENGERS.—No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provisions having the force and effect of law relating to scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route or relating to the implementation of any change in the rates for such transportation or for charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required. This subsection shall not apply to intrastate commuter bus operations.

''(b) FREIGHT FORWARDERS AND TRANSPORTATION BROKERS.—

''(1) GENERAL RULE.—Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or transportation broker.

''(2) CONTINUATION OF HAWAII'S AUTHORITY.—Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.

''(c) MOTOR CARRIERS OF PROPERTY.—

''(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4) of this title) or any motor private carrier or any transportation intermediary (as defined in sections 13102(1) and 13102(7) of this subtitle) with respect to the transportation of property.

''(2) MATTERS NOT COVERED.—Paragraph (1)—

''(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

''(B) does not apply to the transportation of household goods; and

''(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price and related conditions of for-hire motor vehicle transportation by a tow truck, if such transportation is performed—

''(i) at the request of a law enforcement agency; or

''(ii) without the prior consent or authorization of the owner or operator of the motor vehicle.

''(3) STATE STANDARD TRANSPORTATION PRACTICES.—

''(A) CONTINUATION.—Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to—

''(i) uniform cargo liability rules,

''(ii) uniform bills of lading or receipts for property being transported,

''(iii) uniform cargo credit rules, or

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

if such law, regulation, or provision meets the requirements of subparagraph (B).

''(B) REQUIREMENTS.—A law, regulation, or provision of a State, political subdivision, or political authority meets the requirements of this subparagraph if—

''(i) the law, regulation, or provision covers the same subject matter as, and compliance with such law, regulation, or provision is no more burdensome than compliance with, a provision of this part or a regulation issued by the Secretary of Transportation or the Intermodal Surface Transportation Board under this part; and

''(ii) the law, regulation, or provision only applies to a carrier upon request of such carrier.

''(C) ELECTION.—Notwithstanding any other provision of law, a carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a law, regulation, or provision of a State, political subdivision, or political authority under this paragraph.

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

"§ 14502. Tax discrimination against motor carrier transportation property

''(a) In this section—

''(1) 'assessment' means valuation for a property tax levied by a taxing district;

''(2) 'assessment jurisdiction' means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

''(3) 'motor carrier transportation property' means property, as defined by the Secretary of Transportation, owned or used by a motor carrier providing transportation in interstate commerce whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135 of this title; and

''(4) 'commercial and industrial property' means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

''(b) The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

''(1) Assess motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

''(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

''(3) Levy or collect an ad valorem property tax on motor carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

''(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of motor carrier transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

''(1) an assessment of the motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the assessment value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all such other property; and

''(2) the collection of ad valorem property tax on the motor carrier transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

"§ 14503. Withholding State and local income tax by certain carriers

''(a)(1) No part of the compensation paid by a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 of this title or by a motor private carrier to an employee who performs regularly assigned duties in 2 or more States as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

''(2) In this subsection 'employee' has the meaning given such term in section 31132 of this title.

''(b)(1) In this subsection, an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of that State in

which the time worked by the employee in the State or subdivision is more than 50 percent of the total time worked by the employee while employed during the calendar year.

''(2) A water carrier providing transportation subject to the jurisdiction of the Secretary of Transportation under subchapter II of chapter 135 of this title shall file income tax information returns and other reports only with—

''(A) the State and subdivision of residence of the employee (as shown on the employment records of the carrier); and

''(B) the State and subdivision in which the employee earned more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

''(3) This subsection applies to pay of a master, officer, or sailor who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal or noncontiguous trade or in the fisheries of the United States.

''(c) A motor and motor private carrier withholding pay from an employee under subsection (a) of this section shall file income tax information returns and other reports only with the State and subdivision of residence of the employee.

''§ 14504. State tax

''A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on—

''(1) a passenger traveling in interstate commerce by motor carrier;

''(2) the transportation of a passenger traveling in interstate commerce by motor carrier;

''(3) the sale of passenger transportation in interstate commerce by motor carrier; or

''(4) the gross receipts derived from such transportation.

''§ 14505. Single State registration system

''(a) DEFINITIONS.—In this section, the terms 'standards' and 'amendments to standards' mean the specification of forms and procedures required by regulations of the Secretary to prove the lawfulness of transportation by motor carrier referred to in section 13501.

''(b) GENERAL RULE.—The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

''(c) SINGLE STATE REGISTRATION SYSTEM.—

''(1) IN GENERAL.—The Secretary shall maintain standards for implementing a system under which—

''(A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139;

''(B) the State of registration shall fully comply with standards prescribed under this section; and

''(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

''(2) SPECIFIC REQUIREMENTS.—

''(A) EVIDENCE OF CERTIFICATE; PROOF OF INSURANCE; PAYMENT OF FEES.—Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier holding a certificate or permit issued under this part—

''(i) to file and maintain evidence of such certificate or permit;

''(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

''(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

''(iv) to file the name of a local agent for service of process.

''(B) RECEIPTS; FEE SYSTEM.—The standards of the Secretary—

''(i) shall require that the registration State issue a receipt, in a form, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this subsection and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

''(ii) shall require that copies of the receipt issued under clause (i) of this paragraph be kept in each of the carrier's commercial motor vehicles;

''(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

''(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this subsection that—

''(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates,

''(II) minimizes the costs of complying with the registration system, and

''(III) results in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

''(v) shall not authorize the charging or collection of any fee for filing and maintaining a certificate or permit under subparagraph (A)(i) of this paragraph.

''(C) PROHIBITED FEES.—The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

''(D) LIMITATION ON PARTICIPATION BY STATES.—Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

''CHAPTER 147—ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES

''§ 14701. General authority

''(a) The Secretary of Transportation or the Intermodal Surface Transportation Board, as applicable, may begin an investigation under this part on the Secretary's or the Transportation Board's own initiative or on complaint. If the Secretary or Transportation Board, as applicable finds that a carrier or broker is violating this part, the Secretary or Transportation Board, as applicable, shall take appropriate action to compel compliance with this part. If the Secretary finds that a foreign motor carrier or foreign motor private carrier is violating chapter 139 of this title, the Secretary shall take appropriate action to compel compliance with that chapter. The Secretary or Transportation Board, as applicable, may take action under this subsection only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

''(b) A person, including a governmental authority, may file with the Secretary or Transportation Board, as applicable, a complaint about a violation of this part by a carrier providing, or broker for, transportation or service subject to jurisdiction under this part or a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title. The complaint must state the facts that are the subject of the violation. The Secretary or Transportation Board, as applicable, may dismiss a complaint that it determines does not state reasonable grounds for investigation and action.

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

''§ 14702. Enforcement by the regulatory authority

''(a) The Secretary of Transportation or the Intermodal Surface Transportation Board, as applicable, may bring a civil action—

''(1) to enforce section 14103 of this title; or

''(2) to enforce this part, or a regulation or order of the Secretary or Transportation Board, as applicable, when violated by a carrier or broker providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 of this title or by a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title.

''(b) In a civil action under subsection (a)(2) of this section—

''(1) trial is in the judicial district in which the carrier, foreign motor carrier, foreign motor private carrier, or broker operates;

''(2) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

''(3) a person participating with a carrier or broker in a violation may be joined in the civil action without regard to the residence of the person.

''(c) The Transportation Board, through its own attorneys, may bring or participate in any civil action involving motor carrier undercharges.

''§ 14703. Enforcement by the Attorney General

''The Attorney General may, and on request of either the Secretary of Transportation or Intermodal Surface Transportation Board shall, bring court proceedings (1) to enforce this part or a regulation or order of the Secretary or Transportation Board or terms of registration under this part and (2) to prosecute a person violating this part or a regulation or order of the Secretary or Transportation Board or term of registration under this part.

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

''(a) A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title does not obey an order of the Secretary of Transportation or the Intermodal Surface Transportation Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection.

''(b)(1) A carrier providing transportation or service subject to jurisdiction under chapter 135 of this title is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff filed under section 13702 of this title.

''(2) A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

''(c)(1) A person may file a complaint with the Transportation Board or the Secretary, as applicable, under section 14701(b) of this title or bring a civil action under subsection (b) (1) or (2) of this section to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title.

''(2) When the Transportation Board or Secretary, as applicable, makes an award under subsection (b) of this section, the Transportation Board or Secretary, as applicable, shall

order the carrier to pay the amount awarded by a specific date. The Transportation Board or Secretary, as applicable, may order a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Transportation Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier or broker does not pay the amount awarded by the date payment was ordered to be made.

''(d)(1) When a person begins a civil action under subsection (b) of this section to enforce an order of the Transportation Board or Secretary requiring the payment of damages by a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title, the text of the order of the Transportation Board or Secretary must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Transportation Board or Secretary are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier or broker is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

''(2) All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

''(3) The district court shall award a reasonable attorney's fee as a part of the damages for which a carrier or broker is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.

''§ 14705. Limitation on actions by and against carriers

''(a) A carrier providing transportation or service subject to jurisdiction under chapter 135 of this title must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

''(b) A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 of this title and an election to file a complaint with the Intermodal Surface Transportation Board or Secretary of Transportation, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

''(c) A person must file a complaint with the Transportation Board or Secretary, as applicable, to recover damages under section 14704(b)(2) of this title within 2 years after the claim accrues.

''(d) The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsection (b) of this section and the 2-year period under subsection (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) of this section to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

''(e) A person must begin a civil action to enforce an order of the Transportation Board or Secretary against a carrier for the payment of money within one year after the date the order required the money to be paid.

''(f) This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of (1) payment of the rate for the transportation or service involved, (2) subsequent refund for overpayment of that rate, or (3) deduction made under section 3726 of title 31, whichever is later.

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

''§ 14706. Liability of carriers under receipts and bills of lading

''(a)(1) A carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 of this title shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or chapter 105 of this title are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier, or (3) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and, except in the case of a freight forwarder, applies to property reconsigned or diverted under a tariff filed under section 13702 of this title. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transportation nearest the destination but does not include a carrier providing only a switching service at the destination.

''(2) A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service and uses a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 of this title to receive property from a consignor, the motor carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor carrier may deliver property for a freight forwarder on the freight forwarder's bill of lading, freight bill, or shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder's delivery receipt.

''(b) The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

''(c)(1) A carrier may limit liability imposed under subsection (a) by establishing rates for the transportation of property (other than household goods) under which the liability of the carrier for such property is limited to a value established by written or electronic declaration of the shippper or by a mutual written agreement between the carrier and shipper.

''(2) If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

''(d)(1) A civil action under this section may be brought against a delivering carrier (other than a rail carrier) in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

''(2)(A) A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

''(B) A civil action under this section may be brought in a United States district court or in a State court.

''(C) In this section, 'judicial district' means (i) in the case of a United States district court, a judicial district of the United States, and (ii) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

''(e) A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice. For the purposes of this subsection—

''(1) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

''(2) communications received from a carrier's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

''(f) A carrier or group of carriers subject to jurisdiction under subchapter I or III of chapter 135 of this title may petition the Transportation Board to modify, eliminate, or establish rates for the transportation of household goods under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper or by a written agreement.

''(g) Within one year after enactment of the Interstate Commerce Commission Sunset Act of 1995, the Secretary shall deliver to the appropriate Congressional authorizing committees a report on the benefit of revising or modifying the terms or applicability of this section, together with any proposed legislation to implement the study's recommendations, if any.

''§ 14707. Private enforcement of registration requirement

''(a) If a person provides transportation by motor vehicle or service in clear violation of section 13901–13904 or 13906 of this title, a person injured by the transportation or service may bring a civil action to enforce any such section. In a civil action under this subsection, trial is in the judicial district in which the person who violated that section operates.

''(b) A copy of the complaint in a civil action under subsection (a) of this section shall be served on the Secretary of Transportation and a certificate of service must appear in the complaint filed with the court. The Secretary may intervene in a civil action under subsection (a)

of this section. The Secretary may notify the district court in which the action is pending that the Secretary intends to consider the matter that is the subject of the complaint in a proceeding before the Secretary. When that notice is filed, the court shall stay further action pending disposition of the proceeding before the Secretary.

''(c) In a civil action under subsection (a) of this section, the court may determine the amount of and award a reasonable attorney's fee to the prevailing party. That fee is in addition to costs allowable under the Federal Rules of Civil Procedure.

''§ 14708. Dispute settlement program for household goods carriers

''(a)(1) As a condition of registration under section 13902 or 13903 of this title, a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 of this title must agree to offer to shippers neutral arbitration as a means of settling disputes between such carriers and shippers of household goods concerning the transportation of household goods.

''(b)(1) The arbitration that is offered must be designed to prevent a carrier from having any special advantage in any case in which the claimant resides or does business at a place distant from the carrier's principal or other place of business.

''(2) The carrier must provide the shipper an adequate notice of the availability of neutral arbitration, including a concise easy-to-read, accurate summary of the arbitration procedure and disclosure of the legal effects of election to utilize arbitration. Such notice must be given to persons for whom household goods are to be transported by the carrier before such goods are tendered to the carrier for transportation.

''(3) Upon request of a shipper, the carrier must promptly provide such forms and other information as are necessary for initiating an action to resolve a dispute under arbitration.

''(4) Each person authorized to arbitrate or otherwise settle disputes must be independent of the parties to the dispute and must be capable, as determined under such regulations as the Secretary of Transportation may issue, to resolve such disputes fairly and expeditiously. The carrier must ensure that each person chosen to settle the disputes is authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decision making process.

''(5) No fee for instituting an arbitration proceeding may be charged the shipper; except that, if the arbitration is binding solely on the carrier, the shipper may be charged a fee of not more than $25 for instituting an arbitration proceeding. In any case in which a shipper is charged a fee under this paragraph for instituting an arbitration proceeding and such dispute is settled in favor of the shipper, the person settling the dispute must refund such fee to the shipper unless the person settling the dispute determines that such refund is inappropriate.

''(6) The carrier must not require the shipper to agree to utilize arbitration prior to the time that a dispute arises.

''(7) The arbitrator may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute (or a party's representative), but such oral presentation may be made only if all parties to the dispute expressly agree to such presentation and the date, time, and location of such presentation.

''(8) The arbitrator must, as expeditiously as possible but at least within 60 days of receipt of written notification of the dispute, render a decision based on the information gathered, except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning such dispute which the person settling the dispute may reasonably require to resolve the dispute, the arbitrator may extend such 60-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, and compensation for damages.

''(c) Materials and information obtained in the course of a decision making process to settle a dispute by arbitration under this section may not be used to bring an action under section 14905 of this title.

''(d) In any court action to resolve a dispute between a shipper of household goods and a motor carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 of this title concerning the transportation of household goods by such carrier, the shipper shall be awarded reasonable attorney's fees if—

''(1) the shipper submits a claim to the carrier within 120 days after the date the shipment is delivered or the date the delivery is scheduled, whichever is later;

''(2) the shipper prevails in such court action; and

''(3)(A) a decision resolving the dispute was not rendered through arbitration under this section within the period provided under subsection (b)(8) of this section or an extension of such period under such subsection; or

''(B) the court proceeding is to enforce a decision rendered through arbitration under this section and is instituted after the period for performance under such decision has elapsed.

''(e) In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation, or service subject to jurisdiction under subchapter I or III of chapter 135 of this title concerning the transportation of household goods by such carrier, such carrier may be awarded reasonable attorney's fees by the court only if the shipper brought such action in bad faith—

''(1) after resolution of such dispute through arbitration under this section; or

''(2) after institution of an arbitration proceeding by the shipper to resolve such dispute under this section but before (A) the period provided under subsection (b)(8) for resolution of such dispute (including, if applicable, an extension of such period under such subsection) ends, and (B) a decision resolving such dispute is rendered.

''(f) The provisions of this section shall apply only in the case of collect-on-delivery transportation of those types of household goods described in section 13102(9)(A) of this title.

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

''Subject to review and approval by the Intermodal Surface Transportation Board, motor carriers subject to jurisdiction under subchapter I of chapter 135 of this title (other than motor carriers providing transportation of household goods) and shippers may resolve, by mutual consent, overcharge and under-charge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications in compliance with section 13702 of this part or sections 10761 and 10762 of this title prior to the effective date of the Interstate Commerce Commission Sunset Act of 1995. Resolution of such claims among the parties shall not subject any party to the penalties for departing from a filed tariff.

''CHAPTER 149—CIVIL AND CRIMINAL PENALTIES

''§ 14901. General civil penalties

''(a) A person required to make a report to the Secretary of Transportation or to the Intermodal Surface Transportation Board, answer a question, or make, prepare, or preserve a record under this part concerning transportation subject to jurisdiction under subchapter I or III of chapter 135 of this title or transportation by a foreign carrier registered under section 13902 of this title, or an officer, agent, or employee of that person that (1) does not make the report, (2) does not specifically, completely, and truthfully answer the question, (3) does not make, prepare, or preserve the record in the form and manner prescribed, (4) does not comply with section 13901 of this title, or (5) does not comply with section 13902(c) of this title is liable to the United States Government for a civil penalty of not less than $500 for each violation and for each additional day the violation continues; except that, in the case of a person who does not have authority under this part to provide transportation of passengers, or an officer, agent, or employee of such person, that does not comply with section 13901 of this title with respect to providing transportation of passengers, the amount of the civil penalty shall not be less than $2,000 for each violation and for each additional day the violation continues.

''(b) A person subject to jurisdiction under subchapter I of chapter 135 of this title, or an officer, agent, or employee of that person, and who is required to comply with section 13901 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall be liable to the United States for a civil penalty not to exceed $20,000 for each violation.

''(c) In determining and negotiating the amount of a civil penalty under subsection (a) or (d) concerning transportation of household goods, the degree of culpability, any history of prior such conduct, the degree of harm to shipper or shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the proceeding, and such other matters as fairness may require shall be taken into account.

''(d) If a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 of this title or a receiver or trustee of such carrier fails or refuses to comply with any regulation issued by the Secretary or the Transportation Board relating to protection of individual shippers, such carrier, receiver, or trustee is liable to the United States for a civil penalty of not less than $1,000 for each violation and for each additional day during which the violation continues.

''(e) Any person that knowingly engages in or knowingly authorizes an agent or other person (1) to falsify documents used in the transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 of this title which evidence the weight of a shipment, or (2) to charge for accessorial services which are not performed or for which the carrier is not entitled to be compensated in any case in which such services are not reasonably necessary in the safe and adequate movement of the shipment, is liable to the United States for a civil penalty of not less than $2,000 for each violation and of not less than $5,000 for each subsequent violation. Any State may bring a civil action in the United States district courts to compel a person to pay a civil penalty assessed under this subsection.

''(f) A person, or an officer, employee, or agent of that person, that knowingly pays accepts, or solicits a reduced rate or rates in violation of the regulations issued under section 13707 of this title is liable to the injured party or the United States for a civil penalty of not less than $5,000 and not more than $10,000 plus 3 times the amount of damages which a party incurs because of such violation.

''(g) Trial in a civil action under subsections (a) through (f) of this section is in the judicial district in which (1) the carrier or broker has its principal office, (2) the carrier or broker was authorized to provide transportation or service

under this part when the violation occurred, (3) the violation occurred, or (4) the offender is found. Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

"§ 14902. Civil penalty for accepting rebates from carrier

''A person—

''(1) delivering property to a carrier providing transportation or service subject to jurisdiction under chapter 135 of this title for transportation under this part or for whom that carrier will transport the property as consignor or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country; and

''(2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff required under section 13702 of this title,

is liable to the United States Government for a civil penalty in an amount equal to 3 times the amount of money that person accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.

"§ 14903. Tariff violations

''(a) A person that knowingly offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a carrier subject to jurisdiction under chapter 135 of this title at less than the rate in effect under section 13702 of this title shall be fined at least $1,000 but not more than $20,000, imprisoned for not more than 2 years, or both.

''(b) A carrier providing transportation or service subject to jurisdiction under chapter 135 of this title or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to jurisdiction under that chapter, that willfully does not observe its tariffs as required under section 13702 of this title, shall be fined at least $1,000 but not more than $20,000, imprisoned for not more than 2 years, or both.

''(c) When acting in the scope of their employment, the actions and omissions of persons acting for or employed by a carrier or shipper that is subject to subsection (a) or (b) of this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

''(d) Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

"§ 14904. Additional rate violations

''(a) A person, or an officer, employee, or agent of that person, that—

''(1) knowingly offers, grants, gives, solicits, accepts, or receives a rebate for concession, in violation of a provision of this part related to motor carrier transportation subject to jurisdiction under subchapter I of chapter 135 of this title; or

''(2) by any means knowingly and willfully assists or permits another person to get transportation that is subject to jurisdiction under that subchapter at less than the rate in effect for that transportation under section 13702 of this title,

shall be fined at least $200 for the first violation and at least $250 for a subsequent violation.

''(b)(1) A freight forwarder providing service subject to jurisdiction under subchapter III of chapter 135 of this title, or an officer, agent, or employee of that freight forwarder, that knowingly and willfully assists a person in getting, or willingly permits a person to get, service provided under that subchapter at less than the rate in effect for that service under section 13702 of this title, shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

''(2) A person that knowingly and willfully by any means gets, or attempts to get, service provided under subchapter III of chapter 135 of this title at less than the rate in effect for that service under section 13702 of this title, shall be fined not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

"§ 14905. Penalties for violations of rules relating to loading and unloading motor vehicles

''(a) Any person who knowingly authorizes, consents to, or permits a violation of subsection (a) or (b) of section 14103 of this title or who knowingly violates subsection (a) of such section is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

''(b) Any person who knowingly violates section 14103(b) of this title shall be fined not more than $10,000, imprisoned for not more than 2 years, or both.

"§ 14906. Evasion of regulation of carriers and brokers

''A person, or an officer, employee, or agent of that person that by any means knowingly and willfully tries to evade regulation provided under this part for carriers or brokers shall be fined at least $200 for the first violation and at least $250 for a subsequent violation.

"§ 14907. Record keeping and reporting violations

''A person required to make a report to the Secretary of Transportation or to the Intermodal Surface Transportation Board, as applicable, answer a question, or make, prepare, or preserve a record under this part about transportation subject to jurisdiction under subchapter I or III of chapter 135 of this title, or an officer, agent, or employee of that person, that (1) willfully does not make that report, (2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary or Transportation Board, as applicable, requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed, (4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record, (6) knowingly and willfully makes a false or incomplete entry in that record about a business related fact or transaction, or (7) knowingly and willfully makes, prepares, or preserves a record in violation of an applicable regulation or order of the Secretary or Transportation Board shall be fined not more than $5,000.

"§ 14908. Unlawful disclosure of information

''(a)(1) A carrier or broker providing transportation subject to jurisdiction under subchapter I, II, or III of chapter 135 of this title or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not knowingly disclose to another person, except the shipper or consignee, and another person may not solicit, or knowingly receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this part without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

''(2) A person violating paragraph (1) of this subsection shall be fined not less than $2,000. Trial in a criminal action under this paragraph is in the judicial district in which any part of the violation is committed.

''(b) This part does not prevent a carrier or broker providing transportation subject to jurisdiction under chapter 135 of this title from giving information—

''(1) in response to legal process issued under authority of a court of the United States or a State;

''(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

''(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

"§ 14909. Disobedience to subpenas

''A person not obeying a subpena or requirement of the Secretary of Transportation or the Intermodal Surface Transportation Board to appear and testify or produce records shall be fined not less than $5,000, imprisoned for not more than one year, or both.

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

''When another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates a provision of this part or a regulation or order prescribed under this part, or a condition of a registration under this part related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135 of this title or a condition of a registration under section 13902 of this title, shall be fined at least $500 for the first violation and at least $500 for a subsequent violation. A separate violation occurs each day the violation continues.

"§ 14911. Punishment of corporation for violations committed by certain individuals

''An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier providing transportation or service subject to jurisdiction under chapter 135 of this title that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.

"§ 14912. Weight-bumping in household goods transportation

''(a) For the purposes of this section, 'weight-bumping' means the knowing and willful making or securing of a fraudulent weight on a shipment of household goods which is subject to jurisdiction under subchapter I or III of chapter 135 of this title.

''(b) Any individual who has been found to have committed weight-bumping shall, for each offense, be fined at least $1,000 but not more than $10,000, imprisoned for not more than 2 years, or both.

"§ 14913. Conclusiveness of rates in certain prosecutions

''When a carrier publishes or files a particular rate under section 13702 or participates in such a rate, the published or filed rate is conclusive proof against that carrier, its officers, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 14902 or 14903 of this title. A departure, or offer to depart, from that published or filed rate is a violation of those sections.''.

Subtitle B—Motor Carrier Registration and Insurance Requirements

SEC. 451. AMENDMENT OF SECTION 31102.

Section 31102(b)(1) is amended by—

(1) striking ''and'' at the end of subparagraph (O);

(2) striking the period at the end of subparagraph (P) and inserting a semicolon and ''and''; and

(3) adding at the end thereof the following:

''(Q) ensures that the State will cooperate in the enforcement of registration and financial responsibility requirements under sections 31140 and 31146 of this title, or regulations issued thereunder.''

SEC. 452. AMENDMENT OF SECTION 31138.

(a) Section 31138(c) is amended by adding at the end thereof the following new paragraph:

''(3) A motor carrier may obtain the required amount of financial responsibility from more than one source provided the cumulative amount is equal to the minimum requirements of this section.''.

(b) Section 31138(e) is amended—

(1) by striking ''or'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; or''; and

(3) by adding at the end the following:

''(4) providing mass transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under section 5307, 5310, or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities; Provided That, in any case in which the transit service area is located in more than 1 State, the minimum level of financial responsibility for such motor vehicle will be at least the highest level required for any of such States.''.

(c) Section 31139(e) is amended by adding at the end thereof the following:

''(3) A motor carrier may obtain the required amount of financial responsibility from more than one source provided the cumulative amount is equal to the minimum requirements of this section.''.

SEC. 453. SELF-INSURANCE RULES.

The Secretary of Transportation shall continue to enforce the rules and regulations of the Interstate Commerce Commission, as in effect on July 1, 1995, governing the qualifications for approval of a motor carrier as a self-insurer, until such time as the Secretary finds it in the public interest to revise such rules. The revised rules must provide for—

(1) continued ability of motor carriers to qualify as self-insurers; and

(2) the continued qualification of all carriers then so qualified under the terms and conditions set by the Interstate Commerce Commission or Secretary at the time of qualification.

SEC. 454. SAFETY FITNESS OF OWNERS AND OPERATORS.

Section 31144 is amended by—

(1) striking ''In cooperation with the Interstate Commerce Commission, the'' in the first sentence of subsection (a) and inserting ''The'';

(2) by striking ''sections 10922 and 10923'' in that sentence and inserting ''section 13902'';

(3) striking ''and the Commission'' in subsection (a)(1)(C); and

(4) striking subsection (b) and inserting the following:

''(b) FINDINGS AND ACTION ON REGISTRATIONS.—The Secretary shall—

''(1) find a registrant as a motor carrier unfit if the registrant does not meet the safety fitness requirements established under subsection (a) of this section; and

''(2) withhold registration.''.

TITLE V—AMENDMENTS TO OTHER LAWS

SEC. 501. FEDERAL ELECTION CAMPAIGN ACT OF 1971.

Section 401 of the Federal Election Campaign Act of 1971 (2 U.S.C. 451) is amended by—

(1) striking ''Interstate Commerce Commission,'' and inserting ''Intermodal Surface Transportation Board,''; and

(2) striking ''promulgate, within ninety days after the date of enactment of this Act,'' and inserting ''maintain''.

SEC. 502. AGRICULTURAL ADJUSTMENT ACT OF 1938.

Section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) is amended by—

(1) striking ''Interstate Commerce Commission'' and inserting ''Intermodal Surface Transportation Board'' each place it appears;

(2) striking ''Commission'', wherever it appears and inserting ''Transportation Board''; and

(3) striking ''Commission's'' in subsection (b) and inserting ''Transportation Board's''.

SEC. 503. AGRICULTURAL MARKETING ACT OF 1946.

Section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) is amended by striking ''Interstate Commerce Commission,'' and inserting ''Intermodal Surface Transportation Board,''.

SEC. 504. ANIMAL WELFARE ACT.

Section 15(a) of the Animal Welfare Act (7 U.S.C. 2145(a)) is amended by striking ''Interstate Commerce Commission'' and inserting ''Intermodal Surface Transportation Board''.

SEC. 505. TITLE 11, UNITED STATES CODE.

(a) Section 1164 of title 11, United States Code, is amended by striking ''Commission'' and inserting ''Intermodal Surface Transportation Board''.

(b) Section 1170 of title 11, United States Code, is amended by—

(1) striking ''Commission'' the first time it appears in subsection (b) and inserting ''Intermodal Surface Transportation Board''; and

(2) striking ''Commission'' wherever else it appears and inserting ''Transportation Board''.

(c) Section 1172 of title 11, United States Code, is amended by—

(1) striking ''Commission'' the first time it appears in subsection (b) and inserting ''Intermodal Surface Transportation Board''; and

(2) striking ''Commission'' wherever else it appears and inserting ''Transportation Board''.

SEC. 506. CLAYTON ACT.

The Clayton Act (15 U.S.C. 12 et seq.) is amended by—

(1) striking ''Interstate Commerce Commission'' in the last sentence of section 7 (15 U.S.C. 18) and inserting ''Intermodal Surface Transportation Board'';

(2) inserting a comma and ''Transportation Board,'' after ''such Commission'' in the last sentence of that section;

(3) striking ''Interstate Commerce Commission'' in the first sentence of section 11(a) (15 U.S.C. 21) and inserting ''Intermodal Surface Transportation Board''; and

(4) striking ''Interstate Commerce Commission'' in section 16 (15 U.S.C. 26) and inserting ''Intermodal Surface Transportation Board''.

SEC. 507. CONSUMER CREDIT PROTECTION ACT.

The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by—

(1) striking ''Interstate Commerce Commission'' in section 621(b)(4) (15 U.S.C. 1681s) and inserting ''Intermodal Surface Transportation Board'';

(2) inserting a comma and ''and part B of subtitle IV of title 49, United States Code, by the Secretary of Transportation with respect to any common carrier subject to such part;'' in section 621(b)(4) (15 U.S.C. 1681s) after ''those Acts'';

(3) striking ''Interstate Commerce Commission'' in section 704(a)(4) (15 U.S.C. 1691c) and inserting ''Intermodal Surface Transportation Board'';

(4) inserting a comma and ''and part B of subtitle IV of title 49, United States Code, by the Secretary of Transportation with respect to any common carrier subject to such part'' in section 704(a)(4) (15 U.S.C. 1691c) after ''those Acts'';

(5) striking ''Interstate Commerce Commission'' in section 814(b)(4) (15 U.S.C. 1692l) and inserting ''Intermodal Surface Transportation Board''; and

(6) inserting a comma and ''and part B of subtitle IV of title 49, United States Code, by the Secretary of Transportation with respect to any common carrier subject to such part'' in section 814(b)(4) (15 U.S.C. 1692l) after ''those Acts''.

SEC. 508. NATIONAL TRAILS SYSTEM ACT.

The National Trails System Act (16 U.S.C. 1241 et seq.) is amended by—

(1) striking ''Interstate Commerce Commission'' in the first sentence of section 8(d) (16 U.S.C. 1247(d)) and inserting ''Intermodal Surface Transportation Board'';

(2) striking ''Commission'' in the last sentence of section 8(d) (16 U.S.C. 1247(d)) and inserting ''Intermodal Surface Transportation Board''; and

(3) striking ''Interstate Commerce Commission'' in section 9(b) (16 U.S.C. 1248(d)) and inserting ''Intermodal Surface Transportation Board''.

SEC. 509. TITLE 18, UNITED STATES CODE.

Section 6001 of title 18, United States Code, is amended by striking ''Interstate Commerce Commission'' in subsection (1) and inserting ''Intermodal Surface Transportation Board''.

SEC. 510. INTERNAL REVENUE CODE OF 1986.

(a) Section 3231 of the Internal Revenue Code of 1986 (26 U.S.C. 3231) is amended by—

(1) striking ''Interstate Commerce Commission'' in subsection (a) and inserting ''Intermodal Surface Transportation Board''; and

(2) striking subsection (g) and inserting the following:

''(g) CARRIER.—For purposes of this chapter, the term 'carrier' means a rail carrier providing transportation subject to chapter 105 of title 49, United States Code.''.

(b) Section 7701(a) of the Internal Revenue Code of 1986 (26 U.S.C. 7701(a)) is amended by—

(1) striking ''Federal Power Commission'' in paragraph (33)(B) and inserting ''Federal Energy Regulatory Commission'';

(2) striking ''Interstate Commerce Commission'' in paragraph (33)(C)(i) and inserting ''Intermodal Surface Transportation Board'';

(3) striking ''Interstate Commerce Commission'' in paragraph (33)(C)(ii) with ''Federal Energy Regulatory Commission'';

(4) striking ''Interstate Commerce Commission under subchapter III of chapter 105'' in paragraph (33)(F) and inserting ''Secretary of Transportation under subchapter II of chapter 135'';

(5) striking ''subchapter I of'' in paragraph (33)(G); and

(6) striking ''subchapter I of'' in the first sentence of paragraph (33)(H).

SEC. 511. TITLE 28, UNITED STATES CODE.

(a) The heading of chapter 157 of part VI of title 28, United States Code, is amended by striking ''INTERSTATE COMMERCE COMMISSION'' and inserting ''INTERMODAL SURFACE TRANSPORTATION BOARD''.

(b) Section 2321 of title 28, United States Code, is amended by—

(1) striking ''Commission's'' in the section caption and inserting ''Intermodal Surface Transportation Board's''; and

(2) striking ''Interstate Commerce Commission'' in subsections (a) and (b) and inserting ''Intermodal Surface Transportation Board''.

(c) Section 2323 of title 28, United States Code, is amended by—

(1) striking ''Interstate Commerce Commission'' and inserting ''Intermodal Surface Transportation Board''; and

(2) striking ''Commission'', wherever it appears, and inserting ''Transportation Board''.

(d) Section 2341 of title 28, United States Code, is amended by—

(1) striking ''Interstate Commerce Commission'' in paragraph (3)(A);

(2) striking ''and'' in paragraph (3)(C);

(3) striking ''Act.'' in paragraph (3)(D) and inserting ''Act; and''; and

(4) inserting after paragraph (3)(D) the following:

''(E) the Transportation Board, when the order was entered by the Intermodal Surface Transportation Board.''.

(e) Section 2342 of title 28, United States Code, is amended by—

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

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

''(5) all rules, regulations, or final orders of the Intermodal Surface Transportation Board made reviewable by section 2321 of this title; and''.

SEC. 512. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.

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

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

(2) striking ''part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.), and any successor provision of'' in paragraph (3) and inserting ''part B of''.

SEC. 513. TITLE 39, UNITED STATES CODE.

(a) Section 5005 of title 39, United States Code, is amended by striking ''Interstate Commerce Commission'' in subsection (b)(3) and inserting ''Intermodal Surface Transportation Board''.

(b) Section 5203 of title 39, United States Code, is amended by—

(1) striking subsection (f) and redesignating subsection (g) as subsection (f); and

(2) striking ''Commission'' in subsection (f), as redesignated, and inserting ''Intermodal Surface Transportation Board''.

(c) Section 5207 of title 39, United States Code, is amended by—

(1) striking ''Interstate Commerce Commission'', in both the section caption and subsection (a), and inserting ''Intermodal Surface Transportation Board''; and

(2) striking ''Commission'' wherever it appears and inserting ''Transportation Board''.

(d) Section 5208 of title 39, United States Code, is amended by—

(1) striking ''Commission's'' in subsection (a) and inserting ''Transportation Board's''; and

(2) striking ''Commission'' wherever it appears and inserting ''Transportation Board''.

(e) The index for chapter 52 of title 39, United States Code, is amended by striking out the items relating to section 5207 and inserting in lieu thereof the following:

''5207. Intermodal Surface Transportation Board to fix rates.'' ...

SEC. 514. ENERGY POLICY ACT OF 1992.

Section 1340 of the Energy Policy Act of 1992 (42 U.S.C. 13369) is amended by striking ''Interstate Commerce Commission'' in subsections (a) and (d) and inserting ''Intermodal Surface Transportation Board''.

SEC. 515. RAILWAY LABOR ACT.

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

(1) striking ''any express company, sleeping-car company, carrier by railroad, subject to'' in the first paragraph and inserting ''any railroad subject to'';

(2) striking ''Interstate Commerce Commission'' in the first and fifth paragraphs and inserting ''Intermodal Surface Transportation Board''; and

(3) striking ''Commission'', wherever it appears in the fifth paragraph and inserting ''Intermodal Surface Transportation Board''.

SEC. 516. RAILROAD RETIREMENT ACT OF 1974.

Section 1 of the Railroad Retirement Act of 1974 (45 U.S.C. 231) is amended by—

(1) striking subsection (a)(1)(i) and inserting: ''(i) any carrier by railroad subject to chapter 105 of title 49, United States Code;'';

(2) striking ''Interstate Commerce Commission'' in subsection (a)(2)(ii) and inserting ''Intermodal Surface Transportation Board'';

(3) striking ''Board,'' in subsection (a)(2)(ii) and inserting ''Railroad Retirement Board,''; and

(4) inserting ''Intermodal Surface Transportation Board,'' after Interstate Commerce Commission,'' in the first sentence of subsection (o).

SEC. 517. RAILROAD UNEMPLOYMENT INSURANCE ACT.

(a) Section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351) is amended by—

(1) striking ''Interstate Commerce Commission'' in the second sentence of paragraph (a) and inserting ''Intermodal Surface Transportation Board'';

(2) striking ''Board,'' in the second sentence of paragraph (a) and inserting ''Railroad Retirement Board,''; and

(3) striking paragraph (b) and inserting the following:

''(b) The term 'carrier' means a carrier by railroad subject to chapter 105 of title 49, United States Code.''.

(b) Section 2(h)(3) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(h)(3)) is amended by—

(1) striking ''Interstate Commerce Commission'' and inserting ''Intermodal Surface Transportation Board''; and

(2) striking ''Board,'' and inserting ''Railroad Retirement Board,''.

SEC. 518. EMERGENCY RAIL SERVICES ACT OF 1970.

Section 3 of the Emergency Rail Services Act of 1970 (45 U.S.C. 662) is amended by striking ''Commission'', wherever it appears in subsections (a) and (b), and inserting ''Intermodal Surface Transportation Board''.

SEC. 519. REGIONAL RAIL REORGANIZATION ACT OF 1973.

Section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744) is amended by—

(1) striking ''Commission'' in subsection (d)(1)(A) and inserting ''Intermodal Surface Transportation Board''; and

(2) striking ''Commission'' wherever else it appears in paragraph (1) or (3) of subsection (d), and in subsections (f) and (g), and inserting ''Transportation Board''.

SEC. 520. RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976.

Section 510 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 830) is amended by striking ''section 20a of the Interstate Commerce Act (49 U.S.C. 20a)'' and inserting ''section 11301 of title 49, United States Code''.

SEC. 521. ALASKA RAILROAD TRANSFER ACT OF 1982.

Section 608 of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1207) is amended by striking ''Interstate Commerce Commission'' wherever it appears in subsections (a) and (c) and inserting ''Intermodal Surface Transportation Board''.

SEC. 522. MERCHANT MARINE ACT, 1920.

(a) Section 8 of Merchant Marine Act, 1920 (46 U.S.C. App. 867) is amended by—

(1) striking ''Interstate Commerce Commission'' in both places that it appears and inserting ''Intermodal Surface Transportation Board''; and

(2) striking ''commission'' and inserting ''board''.

(b) Section 28 of the Merchant Marine Act, 1920 (46 U.S.C. App. 884) is amended by—

(1) striking ''Interstate Commerce Commission'' where it first appears and inserting ''Intermodal Surface Transportation Board''; and

(2) striking ''Interstate Commerce Commission'' wherever else it appears and inserting ''Transportation Board''.

SEC. 523. SERVICE CONTRACT ACT OF 1965.

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

SEC. 524. FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT OF 1994.

Section 601(d) of the Federal Aviation Administration Authorization Act of 1994 (Pub. L. 103–305) is amended by striking all after ''subsection (c)'' and inserting ''shall not take effect as long as section 11501(g)(2) of title 49, United States Code, applies to that State.''.

TITLE VI—AUTHORIZATION

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) for the closedown of the Interstate Commerce Commission and severance costs for Interstate Commerce Commission personnel, regardless of whether those severance costs are incurred by the Commission or by the Intermodal Surface Transportation Board, the balance of the $13,379,000 appropriated to the Commission for fiscal year 1996, together with any unobligated balances from user fees collected by the Commission during fiscal year 1996;

(2) for the operations of the Intermodal Surface Transportation Board for fiscal year 1996, $8,421,000, and any fees collected by the Transportation Board pursuant to section 9701 of title 31, United States Code, shall be made available to the Transportation Board; and

(3) for the operations associated with functions transferred from the Interstate Commerce Commission to the Intermodal Surface Transportation Board under this Act, $12,000,000 for each of the fiscal years 1997 and 1998, and any fees collected by the Transportation Board pursuant to section 9701 of title 31, United States Code, shall be made available to the Transportation Board.

TITLE VII—EFFECTIVE DATE

SEC. 701. EFFECTIVE DATE.

Except as otherwise expressly provided, this Act and the amendments made by this Act shall take effect on January 1, 1996.

PRIVILEGE OF THE FLOOR

Mr. PRESSLER. Madam President, I ask unanimous consent that Ellen D. Hanson, a detailee from the Interstate Commerce Commission to the Committee on Commerce, Science, and Transportation, be granted floor privileges during consideration of S. 1396.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Madam President, I rise to begin the full Senate's consideration of S. 1396, the Interstate Commerce Commission Sunset Act of 1995. I am very pleased to be joined in this effort by the bill's coauthor and comanager, Senator EXON. This legislation is also cosponsored by Senator BURNS, HOLLINGS, INOUYE, HUTCHINSON, and KASSEBAUM. It is a bipartisan bill and I urge my colleagues' bipartisan support in its swift passage.

LEGISLATIVE HISTORY

Introduced on November 3, 1995, this legislation is in direct response to the fiscal year 1996 budget resolution which assumes the elimination of the Interstate Commerce Commission [ICC] and the fiscal year 1996 Department of Transportation appropriations bill, H.R. 2002, which provides no funding for the ICC effective December 31, 1995—Public Law 104–50. It is the product of nearly a year's worth of bipartisan study, discussion, and work.

S. 1396 addresses what is fast approaching an emergency situation, the imminent, congressionally mandated shutdown of the ICC, in just over a month. However, it does so in a manner that embodies a reasonable oversight structure for our Nation's surface transportation industries. The bill would eliminate scores of unnecessary regulatory provisions in a balanced manner, yet preserve necessary core regulations and allow for continued protection of shippers and the consuming public.

This legislation would sunset two Federal agencies, the Interstate Commerce Commission [ICC] and the Federal Maritime Commission [FMC]. The ICC would terminate effective January 1, 1996, and the FMC would terminate 1 year later, January 1, 1997. The bill would repeal over 70 obsolete ICC regulatory functions and transfer residual functions partly to a newly established independent Intermodal Surface Transportation Board [Board] within DOT and partly to the Secretary of Transportation. When the FMC sunsets in 1997, its remaining functions would be transferred to the new Board.

S. 1396 reflects a board consensus, as demonstrated by the Commerce Committee's unanimous vote reporting it during its November 9 executive session. That consensus is likewise reflected by the overwhelming 417 to 8 vote approving a similar House bill on November 14. These votes are the expression of the underlying agreement on fundamental substance that has emerged on both sides of the Hill and both sides of the aisle during the past year.

Madam President, it is imperative that this bill be approved promptly if we are to authorize an orderly ICC sunset and identify which functions should be continued and by what agency or agencies, within the constraints of the funding approved. Once authorized, the timely shutdown of our Nation's oldest regulatory agency will be ensured. It is likewise imperative that the bill's careful consensus structure not be undone by ill-considered amendments.

BACKGROUND

I do want to briefly explain some of the underlying philosophy that went into the drafting of S. 1396.

Throughout the process, Senator EXON and I have worked together very closely. In fact, much of this legislation initially was written by my good friend. Over the months, much compromise and cooperation have produced what I feel is a balanced bill, addressing the immediate and compelling needs driving this legislation.

Our staff members and those of other committee members have collaborated throughout the process. Many long hours have been spent in joint meetings with various interest groups and constituents who have raised concerns or urged revisions to the bill. We have worked very hard to address legitimate concerns, and have made numerous changes and revisions throughout the process in an effort to address those concerns. However, as hard as we have worked to please all parties, our policy decisions ultimately were driven by the need to produce a bill which could be passed and signed into law as soon as possible.

Madam President, this is historic legislation. The ICC is our oldest independent regulatory agency. Established in 1887—108 years ago—it was originally created to protect shippers from the monopoly power of the railroad industry. Throughout subsequent years, the ICC's regulatory responsibilities were broadened and strengthened, and expanded to other modes. However, in more recent years, particularly in the 1980's, a series of regulatory reform bills significantly deregulated the surface transportation industries, reducing the ICC's authority.

Even with the considerable deregulation of the surface transportation industries, the ICC continues to maintain a formidable regulatory presence. The ICC determines policy through its rulemaking and adjudicative proceedings to ensure the effective administration of the Interstate Commerce Act [ICA], related statutes, and regulations. The ICC maintains jurisdiction over the rail industry, certain pipelines, barge operators, bus lines, freight forwarders, household goods movers, and approximately 60,000 for-hire motor carriers. Yet its remaining functions can and should continue to be reduced. The same could be said about every Government agency. Less Government regulation would be better. S. 1396 moves us significantly in that direction.

In my view, the positive and necessary adjudicatory role of the ICC should not simply cease to exist at the end of this year. Indeed, the ICC has performed and continues to perform important functions. For example, my home State of South Dakota would today have hundreds of miles less rail service than we presently enjoy if it were not for the abandonment public interest review authority of the ICC. Indeed, rail service to many smaller communities throughout the country might not exist without the work of the ICC.

As I stated when I introduced this bill, budget constraints and appropriations legislation which terminate the agency's functions at the end of this year render moot any debate over whether or not we should keep the ICC. Given the realities of the budget situation, the issue is not whether the ICC should be terminated, but how it will be dismantled.

Therefore, we are tasked with determining what ICC functions can continue to be effectively performed by a successor with a very limited budget. S. 1396 provides a reasoned approach designed to ensure continued protections against industry abuse while at the same time assure the economic efficiencies of our Nation's surface transportation system can continue.

Specifically, this legislation would sunset the ICC and transfer its necessary residual functions to an independent Board within the DOT. The Board would administer the residual regulations over rail carriers and pipelines and provide limited adjudicatory oversight over the motor carrier industry. The Secretary of Transportation would inherit the residual nonadjudicatory functions governing the motor carrier industry.

The overall approach taken in this legislation was to limit its scope to the most efficient and simplest sunset and transfer bill, as opposed to a wholesale rewrite of transportation policy. Numerous unnecessary functions were eliminated. In transferring the essential functions that remain, some changes to these functions also had to be made due to the budget constraints which will confront the successor agency. While some also advocated a number of changes I considered to be far more regulatory in nature than I could support, I also recognize those concerns remain.

For example, I am particularly concerned about the concerns of small rail shippers and operators in light of continuing industry trends toward overwhelming industry concentration. Some have urged us to reregulate the rail industry to remedy these concerns. They argue that since the Staggers Act greatly deregulated the rail industry, shippers have been faced with difficult if not impossible relief mechanisms. They point out that the potential for shipper abuse increases with industry concentration. Their argument merit our consideration. However, I am not convinced a return to a pre-Staggers approach is the answer.

Even though I voted against the Staggers Act 15 years ago, I must say it has proved to be extraordinarily successful in reviving a failing rail industry. It generally has had a positive impact on shippers and industry alike. Therefore, at this point, it would be unsound policy to attempt to reregulate, without a clearer identification of the problems and reasonable belief the proposed regulations would remedy those problems.

At the same time, we have attempted to address a few very critical shipper concerns in those areas in which the ICC's current administrative procedures do not enable a shipper to even bring a legitimate grievance and receive an effective remedy. For example, S. 1396 would instruct the new Board to complete the ICC's pending noncoal rate guidelines proceeding so that smaller shippers have a practical procedure available in which to bring a rate case.

Some in the rail industry say this is reregulatory. I strongly disagree. If the mechanisms available under the Interstate Commerce Act are so cumbersome and cost prohibitive that a shipper cannot afford to seek a remedy—and in fact, the ICC has recognized this for the 10 years in which it has attempted to provide an alternative procedure—isn't it our duty to direct the new Board to ensure the ICA is administered effectively? Yes, it is.

SUMMARY OF LEGISLATION

Let me now turn to an overview of the bill's main provisions:

As a general principle, S. 1396 continues the deregulation theme of the past 15 years by providing further regulatory reductions in the surface transportation industries. Overall, the bill is

designed to repeal unnecessary regulations and authorize the transfer of residual functions to DOT. As I previously mentioned, many broader transportation policy proposals viewed by the committee to be reregulatory were not included in this bill. The committee intentionally limited the bill to matters related to sunsetting the ICC and FMC and transferring essential functions to a successor.

1. GOVERNMENTAL EFFICIENCY AND SAVINGS

In response to the increasing emphasis on intermodalism and providing seamless transportation via rail, motor, and water modes in the transportation industry, the bill proposes to house the remaining Federal Government oversight of these transportation modes within a single agency with the expertise and perspective to view the transportation industry as increasingly intermodal. Consolidating remaining ICC and FMC functions within the Board accomplishes this goal. Further, by placing the Board within DOT, the Board would be relieved of separate administrative costs currently borne by both the ICC and the FMC.

2. RAIL TRANSPORTATION

Beyond weeding out outdated and unnecessary provisions, the bill generally does not attempt to substantively redesign rail regulation. Rather, it would preserve the careful balance put in place by the Railroad Revitalization and Regulatory Reform Act of 1976 and the Staggers Act of 1980 that have led to a dramatic revitalization of the rail industry while protecting significant shipper and national interests.

The bill would eliminate many outdated, unnecessary, and burdensome regulatory requirements and restrictions on the rail industry. These include, for example, the elimination of all regulation of rail passenger transportation, all tariff filings, tariffs for nonagricultural commodities, special provisions favoring recyclable commodities, and restrictions against carriers transporting their own commodities.

S. 1396 would retain those provisions needed to preserve an efficient national rail network comprised of numerous individual carriers. These include Federal regulatory oversight of line constructions, line abandonments, line sales, leases, and trackage rights, mergers and other consolidations—under a broad public interest standard and with ongoing regulatory oversight—car supply and interchange, antitrust immunity for certain collective activities—including pooling of equipment and services—competitive access, financial assistance, feeder line development, emergency service orders, and recordation of equipment liens.

The bill would also retain provisions that are necessary to protect rail shippers. These include the common carrier obligation, regulatory oversight of the reasonableness of rail practices, maximum rate regulation for captive traffic, advance notice of rate increases, and rate tariffs for agricultural commodities and fertilizer.

3. MOTOR CARRIER TRANSPORTATION

With regard to motor carrier transportation, S. 1396 would eliminate all vestiges of restrictive entry barriers, based either on a gauging of public demand or need for the service or on protecting existing carriers in a market. However, the bill would retain needed safety oversight and insurance requirements, by converting the existing ICC licensing program into a DOT-administered registration program based solely on a carrier's fitness to operate.

The bill would eliminate the regulatorily created distinction between common and contract motor carriers. Such categorizations have lost their meaning, because most carriers now operate in a dual capacity. Under the bill, all motor carriers would have a common carrier obligation, but would be free to contract for individual shipments.

The bill would eliminate tariffs and rate regulation for general trucking. Such regulation, introduced in the 1930's when trucking was a new and struggling industry, has outlived all usefulness. The trucking industry today is a mature, highly competitive industry in which competition disciplines rates far better than tariff filing and regulatory intervention. Only two specialized categories of trucking operations would still require tariffs and be subject to potential rate regulation. These are residential household goods movements and certain joint motor-water shipments involving Alaska, Hawaii, or U.S. territories—where the water portion of the movement is generally not as competitive and where advance notice and certainty of rates is particularly needed.

S. 1396 would retain the collective activity provisions that allow trucking companies to pool and coordinate their services. It would also retain the existing useful background commercial rules for the trucking industry, involving such matters as owner-operator leasing, lumping, and cargo liability.

While the Federal Government would establish the background rules applicable to trucking operations, the ICC's traditional function of informally resolving disputes in these areas would not be continued. The bill enables aggrieved parties to take such disputes directly to the courts.

4. HOUSEHOLD GOODS TRANSPORTATION

The bill would retain special regulatory provisions for residential household goods movements in view of the special consumer impacts associated with them. Because the individual householder moves infrequently, usually has little market information about such moves, and generally lacks bargaining power, the householder has little self-help ability in a transaction with a large personal impact. To prevent unfair rate advantages and abuses against this least-sophisticated class of shippers, the bill would retain tariff and rate reasonableness requirements for residential household goods moves. It would prohibit carriers from circumventing fair and uniform rates for residential moves by offering contract rates when dealing directly with the householder. The bill would retain the highly successful binding-estimate provisions applicable to household goods moves.

Because the ICC's informal dispute resolution services would no longer be available, the bill would require household goods carriers to offer impartial arbitration of disputes arising out of individual residential moves. This would provide an inexpensive and effective means of dealing with the typical household goods loss or damage claim, which is often so small that any litigation requirement becomes unduly expensive and burdensome.

5. INTERCITY BUS TRANSPORTATION

The bill would remove most remaining regulatory requirements and restrictions from the intercity bus industry. The safety-oriented carrier registration and insurance requirements would be applied to the bus industry, and certain limited restrictions against subsidized carriers competing with unsubsidized carriers would be retained. Also, the bill would retain the special public-interest merger standards and advance approval procedures for the intercity bus industry.

6. TRANSPORTATION INTERMEDIARIES

S. 1396 would continue the licensing and bond requirements for transportation brokers, which are needed to protect the public from unscrupulous brokers. The bill would also apply the same requirements to all freight forwarders. Currently freight forwarders of shipments other than household goods are not required to obtain a license from the ICC, but they are required to maintain a minimum level of cargo liability insurance. The insurance requirement has been difficult to monitor and enforce without a Federal licensing requirement. By extending the registration requirement to all freight forwarders, the bill would fill an inappropriate regulatory gap.

7. PIPELINE TRANSPORTATION

The bill would retain regulation of pipeline transportation insofar as it involves commodities other than oil and gas—which are regulated by the Federal Energy Regulatory Commission—or water—which is not now regulated. Because the pipeline industry has the same monopolistic characteristics as the rail industry, such regulatory oversight must be retained to protect against abuses.

8. DOMESTIC WATER CARRIAGE

The bill would effectively deregulate domestic water carriage in the contiguous-States markets, where there is ample competition to render such regulation unnecessary. However, the bill would retain residual authority over such water carriage for preemptive purposes, to prevent this transportation from being subjected to regulation under other laws.

The extent of maritime regulation that would be transferred to the Board is as yet undetermined. We plan to produce intervening legislation within the next year paring back the FMC's functions before they are transferred to the Board. In fact, the bill requires the Chairman of the new Board to meet with the Chairman of the FMC to develop a plan for the orderly transition of FMC functions to the Board. The Chairman of the Board would then submit the pan to the Director of the Office of Management and Budget, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Transportation and Infrastructure not later than 6 months after enactment of this bill. We expect this plan would address any changes in FMC functions that may be legislated after enactment of this bill, the effect of this transfer on Board funding requirements, personnel matters, and other matters relevant to the transfer of remaining FMC functions on January 1, 1997.

9. TOW TRUCK OPERATIONS

This bill also would correct a serious problem that has been an unintended consequence of legislation last year preempting State and local motor carrier regulation. Specifically, the bill would enable State and local governments to regulate the price and related conditions of nonconsensual tows by tow truck operators, so as to preclude exorbitant prices and unreasonable conditions from being imposed on unwilling parties.

10. INTERMODAL TRANSPORTATION

This bill would remove all existing restrictions that specifically limit or preclude intermodal ownership and intermodal operations. Moreover, by combining the remaining functions of the existing transportation regulatory bodies, the bill should further foster intermodalism.

11. TRANSPORTATION OF FOREIGN CARRIERS UNDER NAFTA

The bill would retain the registration and insurance requirements for foreign motor carriers operating in the United States pursuant to the North American Free-Trade Agreement. The bill would transfer the ICC's existing oversight and enforcement responsibilities in this area to DOT.

Madam President, I have just given a rather lengthy overview of this very detailed legislation. Obviously, the very nature of this bill—sunsetting an agency—requires study and review of the entire Interstate Commerce Act. We have done just that over the past year. We have worked to craft a sound legislative proposal. It may not be a perfect bill. Not all parties support every single provision. However, Senator EXON and I and others have worked and compromised to address concerns throughout this entire process. The time has come to move forward. The clock is running.

This authorization legislation must be enacted if we are to ensure an orderly sunset of the ICC. I urge my colleagues to support the bill.

Madam President, I will yield to the distinguished Senator from Nebraska, who introduced the original legislation and has worked as part of a team in getting this worked out. I thank him very much.

I will say this to the Members of the Senate who have amendments or speeches on this bill. This is a piece of legislation we must pass. We are participating in the closing of a governmental agency, the ICC, and we hear all about closing agencies, and so forth. This is actually happening. We are eliminating many of its duties and putting other functions into the Department of Transportation. Some say, well, you are just taking the functions from one place and putting them into another. But they have been streamlined, and they will have the efficiencies of scale, being in the Department of Transportation. And we have worked this out in response to the budget and appropriations legislation that has been passed zeroing out the ICC. So we must act on this piece of legislation.

I should like to yield to the distinguished Senator from Nebraska for his remarks. And let me commend him for his outstanding leadership on this bill.

Mr. EXON. Madam President, I thank my friend and colleague from South Dakota, the chairman of the Commerce Committee, for his kind remarks. He has outlined very adequately and completely the bill before us that we have worked very, very hard on in the Commerce Committee.

I have long been associated with the Commerce Committee, especially surface transportation, all during my years of service in the U.S. Senate. Certainly with the end of the Interstate Commerce Commission, it is very important that we transfer the duties that have been performed by that agency to a division of Government that can accurately carry them out without the expense that we had with the Interstate Commerce Commission during their days of reining over a whole series of very complicated issues, which I think they accomplished very accurately, very intelligently, and made the right decision for the public at large.

But, Madam President, I rise to support the landmark legislation to eliminate the Interstate Commerce Commission, ICC, and the Federal Maritime Commission, the FMC, and to transfer their responsibilities to a new independent Intermodal Surface Transportation Board, which we call ISTB for short. This will be recognized under and reorganized under the Department of Transportation under this act.

Madam President, this legislation builds upon legislation that I introduced earlier this year known as the Transportation Streamlining Act. Following the introduction of the act, Senator PRESSLER, the chairman of the committee, and I worked with our staffs long and hard to find broad areas of agreement and compromise.

The work product of that negotiation is S. 1396, which is before us, which the chairman of the committee explained very adequately. This legislation represents the latest chapter in a thoughtful and deliberate effort to reform and deregulate America's great transportation sector. The more we can deregulate it, the better it will be and the more service it will provide.

In recent years, the Congress has worked very hard to bring fairness, efficiency, and productivity to all modes of transportation, many of them cited by Chairman PRESSLER. The Negotiated Rates Act approved in 1993 has already saved American businesses billions of dollars in so-called undercharge claims and litigation, ending the undercharge crisis and providing for a fair and expeditious settlement of all undercharge claims.

The Trucking Regulatory Reform Act of 1994, which Chairman PRESSLER alluded to, enacted dramatic and revolutionary Federal regulatory reform in truck and bus transportation. These measures, combined with the intrastate truck rate and route deregulation provision contained in the 1994 airport improvement program reauthorization bill, represent a body of law which compromises one of the most important, dramatic, productive and meaningful regulatory reform in modern times. S. 1396, now before us, known as the Pressler-Exon bill, continues that tradition.

Some areas of compromise were difficult to come by. On labor issues, I believe we have found a fair middle ground. A fair middle ground is the best we could do in this area, but it does protect the public interest in continued rail service while recognizing the sacrifices and the hardships of those hard-working men and women in the rail industry. The House of Representatives took a similar approach, and in conference we will need to carefully reconcile the two bills. As a longtime defender and supporter of an independent Interstate Commerce Commission, I support this legislation with enthusiasm, although I see the end of the Interstate Commerce Commission with some sadness.

As one of the few Members of Congress with regular contact with America's oldest independent regulatory agency, I know well the dedication, the commitment, the hard work of the Commission and all of its employees. A grateful Nation should thank those dedicated public servants for over a century of hard work. In a different time, with different fiscal realities, it might have been possible to maintain a strong independent regulatory agency, but that decision has now been made, and we must move on.

That being said, I support S. 1396 with a great deal of pride and enthusiasm. This legislation opens a new chapter in Federal transportation policy. This legislative effort can also

serve as a model for other agencies to achieve the efficiencies that people demand, but also do the work that the people expect.

One might ask why there is a need for a successor to the Interstate Commerce Commission and the FMC. Simply put, if there were no forum to resolve disputes, oversee standard contract terms, establish national standards and assure fair treatment for shippers and communities, the great, efficient and productive transportation sector would simply spin into chaos, and all members of that transportation system of the United States understand that.

Each State would develop its own rules, and transportation companies would become entangled in needless complicated litigation. The Intermodal Surface Transportation Board, ISTB, will assure that there is continuity and efficiency in transportation policy.

The new ISTB within the Department of Transportation will continue to be the fair referee among shippers, carriers and communities. It will provide interested parties with one-stop shopping and administer a significantly streamlined body of law which assures that the public interest is protected in transportation policy.

This transfer of responsibility and streamlining of authority will reduce costs both to taxpayers and the private sector and, at the same time, assure the key transportation safety responsibilities do not fall between the cracks.

This legislation represents only a first step to even greater consolidation and efficiency of transportation regulation and dispute resolution. I am delighted that the Senate Commerce Committee adopted an amendment which Senators LOTT, BREAUX, PRESSLER, and I offered to sunset the Federal Maritime Commission and transfer their responsibilities to the new board next year. If enacted, this legislation will bring to reality my vision that the new ISTB become a true one-stop shop for all modes of transportation. That is efficiency. By having a staggered sunset of the ICC and the FMC, the Congress has time to thoughtfully review the Nation's maritime laws and to consider reforms in this body of law before the final transfer of responsibility to the ISTB.

Madam President, our Nation takes for granted the blessings of America's great transportation system. Every part of the Nation has accessible transportation service. As Congress continues its efforts to keep regulation to the minimum necessary to protect the public interest, let us not forget what a valuable asset we have and how critically important it is that Congress carefully choose the correct course. We have done that in this instance.

I urge my colleagues to vote today to modernize America's transportation policy and pass S. 1396 as it was reported out of the Commerce Committee under the dedicated leadership of the chairman, Senator PRESSLER from South Dakota.

Madam President, I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

AMENDMENT NO. 3063

(Purpose: To make minor and technical changes in the bill as reported)

Mr. PRESSLER. Madam President, I have a unanimous-consent request that has been cleared on both sides. It regards the committee amendments to be considered and agreed to en bloc.

I send these committee amendments, which are sponsored by myself and Senator EXON, to the desk to make minor and technical changes in the bill as reported.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER], for himself and Mr. EXON, proposes an amendment numbered 3063.

Mr. PRESSLER. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 256, between lines 4 and 5, insert the following:

(c) SEPARATED EMPLOYEES.—Notwithstanding all other laws and regulations, the Department of Transportation shall place all Interstate Commerce Commission employees separated from the Commission as a result of this Act on the DOT reemployment priority list (competitive service) or the priority employment list (excepted service).

On page 281, between lines 18 and 19, insert the following:

SEC. 217. TRANSPORT VEHICLES FOR OFF-ROAD, COMPETITION VEHICLES.

Section 31111(b)(1) is amended—

(1) by striking ''or'' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting a semicolon and ''or''; and

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

''(E) imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers used exclusively or primarily in connection with motorsports competition events.''.

On page 283, strike lines 9 through 11 and insert the following:

''(16) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under the provisions of this subtitle.''.

On page 284, between lines 18 and 19, insert the following:

(5) by striking ''or'' at the end of subsection (b)(1);

(6) by striking the period at the end of subsection (b)(2) and inserting a semicolon and ''or'';

(7) by adding at the end of subsection (b) the following:

''(3) transportation by a commuter authority, as defined in section 24102 of this title, except for sections 11103, 11104, and 11503.'';

On page 284, line 19, strike ''(5)'' and insert ''(8)''.

On page 284, line 24, strike ''(6)'' and insert ''(9)''.

On page 286, line 16, insert ''competitive'' after ''other''.

On page 288, line 22, insert ''full'' after ''a''.

On page 288, line 23, strike ''impractical.'' and insert ''too costly given the value of the case.''.

On page 298, line 14, insert ''competitive'' after ''other''.

On page 319, between lines 2 and 3, insert the following:

(4) striking ''transaction.'' at the end of the second sentence of subsection (c) and inserting ''transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated.'';

On page 319, line 3, strike ''(4)'' and insert ''(5)''.

On page 319, line 4, strike ''(5)'' and insert ''(6)''.

On page 319, line 7, strike ''(6)'' and insert ''(7)''.

On page 319, line 9, strike ''(7)'' and insert ''(8)''.

On page 339, line 20, strike ''and''.

On page 340, line 6, strike ''actions.'' and insert ''actions; and''.

On page 340, between lines 6 and 7, insert the following:

''(4) in regulating transportation by water carrier, to encourage and promote service and price competition in the non-contiguous domestic trade.

On page 346, line 21, insert ''arranging for,'' after ''including''.

On page 346, line 23, insert ''unpacking,'' after ''packing,''.

On page 356, line 10, before ''The'' insert ''(a) GENERAL RULES.—''.

On page 357, between lines 21 and 22, insert the following:

''(b) DEFINITIONS.—In this section, the terms 'State' and 'United States' include the territories, commonwealths, and possessions of the United States.

On page 360, between lines 10 and 11, insert the following:

''(f) The Secretary or Transportation Board, as applicable, is prohibited from regulating or exercising jurisdiction over the transportation by water carrier in the non-contiguous domestic trade of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission or Interstate Commerce Commission under federal law in effect on November 1, 1995.

''(g) The Secretary or Transportation Board, as applicable, may not exempt a water carrier from the application of, or compliance with, sections 13801 and 13702 for transportation in the non-contiguous domestic trade.

On page 361, between lines 9 and 10, insert the following:

''(c) A complaint that a rate, classification, rule or practice in the non-contiguous domestic trade violates subsection (a) of this section may be filed with the Transportation Board.

''(d)(1) For purposes of this section, a rate or division of a carrier for service in non-contiguous domestic trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 7.5 percent above, or more than 10 percent below, the rate or division in effect 1 year before the effective date of the proposed rate or division.

''(2) The percentage specified in paragraph (1) shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the most recent 1-year period before the

date the rate or division in question first took effect.

''(3) The Transportation Board shall determine whether any rate or division of a carrier or service in the non-contiguous domestic trade which is not within the range described in paragraph (1) is reasonable if a complaint is filed under subsection (c) of this section or section 13702(f)(5).

''(4) The Transportation Board, upon a finding of violation of subsection (a) or this section, shall award reparations to the complaining shipper or shippers in an amount equal to all sums assessed and collected that exceed the determined reasonable rate, division, rate structure or tariff. The Transportation Board, upon complaint from any governmental agency or authority, shall, upon a finding or violation of subsection (a) of this section, make such orders as are just and shall require the carrier to return, to the extent practicable, to shippers all sums, plus interest, which the Board finds to have been assessed and collected in violation of such subsections.

''(e) Any proceeding with respect to any tariff, rate charge, classification, rule, regulation or service that was pending before the Federal Maritime Commission shall continue to be heard until completion of issuance of a final order thereon under all applicable laws in effect as of that date.

On page 360, line 22, insert '', or a rate for a movement by a water carrier,'' after ''carrier''.

On page 408, line 7, strike ''13102(9)(A),'' and insert ''13102(9)(A)(i),''.

On page 485, between lines 7 and 8, insert the following:

SEC. 525. FIBER DRUM PACKAGING.

(a) IN GENERAL.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of enactment of this Act authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials if—

(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act as such Act was in effect before October 1, 1991;

(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation; and

(3) the packaging will not be used in the transportation of hazardous materials from a point in the United States to a point outside the United States, or from a point outside the United States to a point inside the United States.

(b) HAZARDOUS MATERIALS TRANSPORTATION AUTHORIZATION ACT OF 1994.—Section 122 of the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. 5101 note) is repealed.

SEC. 526. TERMINATION OF CERTAIN MARITIME AUTHORITY.

(a) REPEAL OF INTERCOASTAL SHIPPING ACT, 1933.—The Act of March 3, 1933 (Chapter 199; 46 U.S.C. App. 843 et seq.), commonly referred to as the Intercoastal Shipping Act, 1933, is repealed effective September 30, 1996.

(b) REPEAL OF PROVISIONS OF SHIPPING ACT, 1916.—The following provisions of the Shipping Act, 1916, are repealed effective September 30, 1996:

(1) Section 3 (46 U.S.C. App. 804).
(2) Section 14 (46 U.S.C. App. 812).
(3) Section 15 (46 U.S.C. App. 814).
(4) Section 16 (46 U.S.C. App. 815).
(5) Section 17 (46 U.S.C. App. 816).
(6) Section 18 (46 U.S.C. App. 817).
(7) Section 19 (46 U.S.C. App. 818).
(8) Section 20 (46 U.S.C. App. 819).
(9) Section 21 (46 U.S.C. App. 820).
(10) Section 22 (46 U.S.C. App. 821).
(11) Section 23 (46 U.S.C. App. 822).
(12) Section 24 (46 U.S.C. App. 823).
(13) Section 25 (46 U.S.C. App. 824).
(14) Section 27 (46 U.S.C. App. 826).
(15) Section 29 (46 U.S.C. App. 828).
(16) Section 30 (46 U.S.C. App. 829).
(17) Section 31 (46 U.S.C. App. 830).
(18) Section 32 (46 U.S.C. App. 831).
(19) Section 33 (46 U.S.C. App. 832).
(20) Section 35 (46 U.S.C. App. 833a).
(21) Section 43 (46 U.S.C. App. 841a).
(22) Section 45 (46 U.S.C. App. 841c).

SEC. 527. CERTAIN COMMERCIAL SPACE LAUNCH ACTIVITIES.

The licensing of a launch vehicle or launch site operator (including any amendment, extension, or removal of the license) under chapter 701 of title 49, United States Code, shall not be considered a major Federal action for purposes of section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if—

(1) the Department of the Army has issued a permit for the activity; and

(2) the Army Corps of Engineers has found that the activity has no significant impact.

SEC. 528. USE OF HIGHWAY FUNDS FOR AMTRAK-RELATED PROJECTS AND ACTIVITIES.

Notwithstanding any other provision of law, the State of Vermont may use any unobligated funds apportioned to the State under section 104 of title 23, United States Code, to fund projects and activities related to the provision of rail passenger service on Amtrak within that State.

SEC. 529. VIOLATION OF GRADE-CROSSING LAWS AND REGULATIONS.

(a) FEDERAL REGULATIONS.—Section 31310 is amended by adding at the end thereof the following:

''(h) GRADE-CROSSING VIOLATIONS.—

''(1) SANCTIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

''(2) MINIMUM REQUIREMENTS.—The regulations issued under paragraph (1) shall, at a minimum, require that—

''(A) the penalty for a single violation is not less than a 60-day disqualification of the driver's commercial driver's license; and

''(B) any employer that knowingly allows, permits, authorized, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than $10,000.''.

(b) DEADLINE.—The initial regulations required under section 31310(h) of title 49, United States Code, shall be issued not later than one year after the date of enactment of this Act.

(c) STATE REGULATIONS.—Section 31311(a) is amended by adding at the end thereof the following:

''(18) The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(h) of this title.''.

Amend the table of sections by inserting the following after the item relating to section 216 of the bill:

Sec. 217. Transport vehicles for off-road, competition vehicles .....

Amend the table of sections by inserting the following after the item relating to section 524 of the bill:

Sec. 525. Fiber drum packaging .....
Sec. 526. Termination of certain maritime authority .....
Sec. 527. Certain commercial space launch activities .....
Sec. 528. Use of highway funds for Amtrak-related projects and activities .....
Sec. 529. Violation of grade-crossing laws and regulations. .....

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

So the amendment (No. 3063) was agreed to.

Mr. PRESSLER. And considered as original text.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Madam President, it is my strongest desire or request, if Senators have amendments, that they bring them to the floor or give us notification. I would like to make a motion, if the Senator from Nebraska agrees, that this bill pass. As far as I know, on this side of the aisle, I do not believe we have been notified of any amendments, but I am ready to go. Of course, I want to preserve the rights of all Senators.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Madam President, I thank the chairman of the committee. I will simply say to him that I believe this bill can be moved rather promptly. If there are any Senators wishing to offer amendments, I suggest this be the final notice to them to appear now or forever hold your peace, and by that, I mean I will certainly suggest the absence of a quorum in just a moment and then possibly the chairman and myself could confer. If we have no appearance of anyone or advised by anyone wishing to offer an amendment, we might check with the majority leader and minority leader and consider going to third reading.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Madam President, I understand the Senator from Washington wishes to ask unanimous consent to go into morning business for a short period of time. Neither the manager nor myself have any objections to that.

I will say that this is the last appeal that this Senator is going to make for anyone that has an amendment on this bill, please come to the Senate now, or I suggest the Senate may set a model for doing things in the future. If we would go quickly, maybe after the remarks by the Senator from Washington, to final reading, if no one is here to offer an amendment.

Mr. PRESSLER. Madam President, I do not want to hold anyone up, but I join my friend in that effort. I know at my party caucus today—if I may admit that we have caucuses—I did announce we were starting this bill at 2:15 and asked anyone who had amendments to please be here.

We do not know of any amendments. We are ready to pass this bill. If any Senator or anybody listening within

the reach of my voice knows of any amendment, please call the hotline now or we will pass this bill in a few minutes.

Mr. EXON. May I add, Madam President, please come forward now or forever hold your peace. Thank you.

Mr. GORTON. Madam President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Without objection, it is so ordered.

BOSNIA

Mr. GORTON. Mr. President, last night the President of the United States spoke to the people of the United States in justification of his dispatch of some 20,000 American troops to Bosnia to enforce the agreement entered into last week in Dayton, OH, ending for the time being, at least, the war in Bosnia.

President Clinton, I believe, made the best possible case for keeping a commitment which he made some months ago. I believe that commitment was both unwise and improvident. Nonetheless, it was made by the President.

For me, and I think for most other Members of Congress, the American national security interest in Bosnia is difficult to discern. We will be there in the hopes that we can settle a civil war which has gone on in its present form for some 4 years, but in a more profound fashion for at least 600 years.

The temporary peace which we will be in Bosnia to enforce is not a just peace. In fact, it ratifies almost all of the gains made as a result of the aggression of the Bosnian Serbs, leaves essentially unchallenged the ethnic cleansing, the displacement of people, and the killing of tens of thousands of innocent civilians.

We will be in Bosnia to support a peace of exhaustion, not a peace of justice.

Having said all that, Mr. President, and having spoken on this floor on numerous occasions in favor of an American policy that would have repudiated the arms embargo and allowed the citizens of Bosnia the effective means to fight for their own freedom and independence, we as Americans, we as United States Senators, are now faced with a fait accompli.

The President of the United States has the constitutional authority, in my view, to send troops to Bosnia and has announced that he is going to do so. As a consequence, however unwise we may consider that decision to have been, we are essentially faced with the proposition that to oppose it, to try to put roadblocks in its path, is likely to increase the already considerable danger in which our troops will find themselves on the front lines in Bosnia.

This reaction is one that I think is fairly common among Members of this body. It was expressed by three former National Security Advisers and Secretaries of Defense before the Armed Services Committee this morning, and by many outside commentators who have felt this administration's position with respect to Bosnia has been wrongheaded almost from the start.

So, sometime in the next week or 2 weeks, we will be presented here on the floor with some sort of resolution with respect to Bosnia. I do not believe any Member, at this point, can say that he or she will vote in favor of it sight unseen or, for that matter, will vote against it sight unseen. I hope we will be able to come up with a resolution which will have at least a wide degree of support here in this body, a broader and less partisan degree of support than was the case a few years ago with respect to the war in the gulf. Such a resolution, I believe, will concentrate on the situation as it exists on the ground today, given the President's decision, rather than with the process that led the President to this decision, one which gives unequivocal support to our troops, to the men and women whose lives will be at risk, to the maximum possible extent without saying we necessarily agree with the policy that brought them there in the first place.

We can all hope that in a period of 1 year the civil passions which have been so brutally expressed during the last 4 years will be extinguished. We can be pardoned for believing that is a very considerable long shot and that our troops, a year from now, are likely to come home leaving behind them exactly the situation they found when they arrived.

Nevertheless, this is the point we have reached. The President has done his best to explain it to the people of the United States, and I am certain that most of them, while they may not like the decision, will certainly provide support for those troops themselves.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERSTATE COMMERCE COMMISSION SUNSET ACT

The Senate continued with the consideration of the bill.

Mr. EXON. Mr. President, the Senator from North Dakota is about to offer an amendment, as I understand it, that he has shown me, and I am opposed to it. But, to accommodate this Senator and the time constraints that I have this afternoon, I wish to make a few appropriate remarks about why, in my opinion, we should not adopt the amendment that is going to be offered by the Senator from North Dakota.

Mr. President, this amendment seeks to change the way mergers are handled by curtailing the current ICC rail merger review process.

Under the current process, and the process in the bill before us—the bill by the chairman of the committee and this Senator from Nebraska—the so-called Intermodal Surface Transportation Board will approve, disapprove, or condition rail mergers based on the public interest standard currently used by the ICC, not a narrow, Department of Justice-type of antitrust analysis. The public interest standard—which is part of the bill offered by the chairman of the committee and myself—allows the board to weigh the public benefits of a merger against its competitive harms. This standard allows the board to condition and approve mergers that are in the public interest even though they might violate some of the existing antitrust laws. This review has served my farmers, the farmers of South Dakota, and other farmers as well. This concept must be kept as part of our overall transportation network if we want it to run efficiently, especially with regard to rural areas.

The current process provides for the input of the Department of Justice. Let me repeat that. The bill before us, the Pressler-Exon bill, provides for the input of the Department of Justice. This amendment goes beyond that and gives the Department of Justice the final say—or the veto, if you will—on rail mergers.

Even though a merger might be approved by the Board because it is in the public interest, is protection of captive shippers, and is in the best interest of the transportation system, the Department of Justice with all of the lawyers, or some other third party, could still bring suit and force divestiture based on antitrust laws under the Dorgan amendment that is going to be proposed.

Mr. President, this amendment erodes the jurisdiction of the Commerce Committee, and the new ISTB board because it invests too much authority in the Department of Justice.

Lawyers are a very important part of our society, depending on your point of view. It seems to me, Mr. President, that, if we are going to turn the Department of Justice into a veto authority which they did not have under the Interstate Commerce Commission and take away the independent functioning of the board that we are setting up with the Pressler-Exon measure in the Department of Transportation, we are taking a significant step backward. I see nothing whatsoever wrong with the Department of Justice being the lawyer-adviser to the new board that is created. They should be consulted as to whether or not there is a serious violation of antitrust laws. But customarily in business, in my experience in business, and my experience as an individual, I have never let my lawyer make decisions for me. I consult with my lawyer, if I need one. I listen to his counsel and advice as to what is right

and what is wrong. But I think the decision has to rest with me. Likewise, for the newly independent board that is created under the Pressler-Exon bill, which vests in a new department under the Department of Transportation, we do not need to hamstring that board and their efforts with regard to what should and should not be done with regard to mergers.

So I hope if the amendment offered by the Senator from North Dakota comes to a vote the Senate will overwhelmingly oppose it.

The Senator from North Dakota was involved in a similar effort with regard to the FCC legislation wherein he and some others felt that the Department of Justice should have the final say so in matters before the Federal Communications Commission. That measure was turned down overwhelmingly by the U.S. Senate because, if we have supposedly independent operating boards, such as the Federal Communications Commission, they should not be hamstrung or dictated to by the Department of Justice. It seems logical as to why we should not accept the amendment being offered by the Senator from North Dakota because it would essentially do the same thing that the Senate voted down with regard to the Federal Communications Commission.

Therefore, I hope that we will give these new independent boards the authority that they obviously need to make decisions based upon the public interest. If turned over to the Justice Department, I believe that too much of the decisions would be made on legal technicality rather than that it is in the best interest of the public, in this case transportation, especially with regard to small States.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

AMENDMENT NO. 3064

(Purpose: To establish certain competition standards with respect to mergers by railroad carriers)

Mr. DORGAN. Mr. President, I send an amendment to the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota (Mr. DORGAN), for himself and Mr. BOND, proposes an amendment numbered 3064.

Mr. DORGAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 319, strike lines 1 through 9 and insert in lieu thereof the following—

(3) striking subparagraph (E) of subsection (b)(1) and inserting in lieu thereof the following—

''(E) whether the proposed transaction will not substantially lessen competition, or tend to create a monopoly in any line of commerce in any section of the country.'';

(4) striking paragraph (2) of subsection (b) and striking ''(1)'' in the first paragraph of subsection (b);

(5) striking subsection (c) and inserting in lieu thereof the following—

''(c) The Commission shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. In making the findings under subsection (b)(1)(E), the Transportation Board—

''(1) shall request an analysis by the Attorney General of the United States and shall accord substantial deference to the recommendations of the Attorney General and shall approve the transaction only if it finds that transaction does not violate the standards set forth in subsection (b)(1)(E). The transaction may not be consummated before the thirtieth calendar day after the date of approval by the Transportation Board. Action under the antitrust laws arising out of the merger transaction may be brought only by the Attorney General, and any action brought shall be commenced prior to the earliest time under this subsection at which a merger transaction approved under this subsection may be consummated. The commencement of such an action shall stay the effectiveness of the Transportation Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. Upon consummation of a merger transaction in compliance with this subsection and after termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, but nothing in this subsection shall exempt any rail carrier resulting from a merger transaction approved under this subsection from complying with the antitrust laws after the consummation of such transaction;

''(2) may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights. Any trackage rights conditions imposed to alleviate anticompetitive effects of the transaction shall provide for compensation levels to ensure that such effects are alleviated;

''(3) may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest, when the transaction contemplates a guaranty or assumption of payment dividends or of fixed charges or will result in an increase of total fixed charges; and

''(4) may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Transportation Board finds their inclusion to be consistent with the public interest.'';

(6) striking the last two sentences of subsection (d);

(7) striking subsection (e); and

(8) notwithstanding any other provisions of this Act, amendments under this section shall apply to all applications pending before the Transportation Board.

Mr. DORGAN. Mr. President, I listened with interest to the statement of the Senator from Nebraska [Mr. EXON]. He is always persuasive and never in doubt. He makes an interesting case on this amendment. He pointed out that I offered a similar amendment on the telecommunications bill, and he is correct about that. I would offer a similar amendment if I had the opportunity dealing with airlines. I wish to explain that because it is the reason I offer this amendment today dealing with railroads.

Let me go to the subject of airline mergers just for a moment. Since deregulation of the airline industry, we have had more and more mergers. We now have five or six very large airlines in America controlling most of the air transportation in our country.

Prior to 1989, when two airlines wanted to merge, the Department of Transportation determined whether they are able to merge or not. They gave the approval. The Justice Department was allowed to comment on it in terms of the antitrust effects: whether the merger would be good for the country and whether it would be good for competitiveness. But the Department of Justice is only allowed to comment. Then the Department of Transportation makes the judgment. And so often the judgment is made on issues other than whether this is good for the country in terms of competition.

In fact, I would make the case that a number of the airline mergers that have occurred have not been good for this country. And if you established an antitrust standard that was worthy, you probably would not have had a couple of these mergers and would not have a couple that will occur in the future. But we have a circumstance where those mergers were approved by the Department of Transportation and Justice is only asked to give its opinion.

With respect to the previous bill that came before the Senate on telecommunications, the Federal Communications Commission will determine when there is competition in the local exchange with the regional Bell systems. I and several of my colleagues said, well, what we would like to do is have the people who know about competition and who know about these standards establish the Clayton Act test over in the Department of Justice about whether or when there is competition.

That is why we have antitrust lawyers in this country. We have, incidentally, about 1,000 antitrust attorneys working for the Federal Government, or we used to have. There have been some cutbacks. One thousand of them. I used to at least threaten to put their pictures on the sides of milk cartons because I swore that despite the fact there were 1,000 antitrust lawyers, you could see no evidence that they lived. You could see no evidence they did anything. You could see no evidence that they cared at all whether there was antitrust activities in this country. In fact, the fewer companies competing, the better, according to some in our Government. I happen to think the more companies that are competing, the better for our free-market system.

Some speak of a regulating mechanism that is good in a free market economy. Well, I have felt this way about airline mergers. I felt this way

about the competition issues with the telecommunications bill, and I feel this way about the legislation before the Senate today.

Let me begin by saying I support the legislation brought to the floor of the Senate by the Senator from Nebraska and the Senator from South Dakota. I commend the two of them as well as Senator HOLLINGS for writing a piece of legislation that I think has great merit and that I support.

I would like to make a change, which is the reason I am offering this amendment. I would like to make an addition to it, but that does not diminish the fact I think all three have done a good job and I compliment them for their work.

This piece of legislation in its larger form abolishes the Interstate Commerce Commission and creates a board over in the Department of Transportation that assumes many of the functions that the old ICC used to have. It does it in a thoughtful way, and it does it in the right way, and I support most of what the Senators have brought to the floor.

I said during the Commerce Committee consideration of the legislation that I have made the case for some years the Interstate Commerce Commission had died from the neck up, and then I found myself mourning its passage. When people said, ''Let's kill it,'' I worried that if you do not put something in its place, all you have are larger and larger railroads, and then a bunch of shippers out here trying to deal with something that is closer to a monopoly than it is to pure competition. It seems to me that we need a regulatory mechanism in between, and that is the purpose for which this board is created in this legislation.

For that I commend Senator PRESSLER, Senator EXON, and Senator HOLLINGS and fully support them. I come to the floor with this amendment to say I think this bill would be improved with one addition, and the addition is offered in my amendment which provides that the Justice Department would have an opportunity using the Clayton Act standard on defining competition to review mergers of railroads.

I recognize that the Interstate Commerce Commission has had the sole purview for reviewing mergers for some 70 years. I understand that. In my judgment, that does not make it right. I would prefer to see the authority given to the Justice Department and the antitrust folks in the Justice Department to evaluate: Is this merger something that makes sense for our country, or, with the Clayton standard, will the proposed merger substantially lessen competition, or would it tend to create a monopoly in any line of commerce in any section of the country? That is the Clayton 7 standard which I would like the Justice Department to be able to apply.

My amendment provides that the Justice Department would make that judgment and offer its assessment using that standard to the Department of Transportation. And that the Board in the Transportation Department would give substantial deference to the Justice Department antitrust analysis. The amendment also provides that if the Justice Department antitrust lawyers who evaluate this determine, using the Clayton standard, that it would lessen competition substantially, it would tend to create a monopoly, et cetera, and it is not in the public interest to proceed and the board would proceed anyway. This establishes a provision by which the Justice Department or the Attorney General would be able to bring an action for a stay.

That is essentially what this amendment does and what it is.

The amendment says that notwithstanding any other provision of this act, amendments under this section shall apply to all applications pending before the transportation board.

I would like to just talk for a moment about the consequences of this. There are some who are concerned because there is a very large proposed merger that has been filed or will be filed that deals with two very large railroad companies. I have no interest in that question at all. I do not have any of those companies in North Dakota. In fact, if the larger railroad company that serves our State were involved in a merger right now, I would still be in the chamber offering it, and I would not care what the larger railroad company that serves our State thinks about it. My interest is making sure that we have a seabed of competition that is enforced by evaluating a standard that is reasonable for ensuring competition. Because only in that manner will consumers, shippers and others reliant on a competitive system, only in that manner will they be able to see that this market system works to their advantage as well.

I wish to say that I was approached by a representative of one of the railroads today asking why I was doing this, and I explained it had nothing to do with their company. In fact, it is interesting in that one of the companies—and I shall not name the companies—involved in this that is very concerned about it is a company that I have great fondness for because when I was a State tax commissioner many years ago and we put together, through an interstate compact, joint auditing around the country of companies, which made a lot of sense from the taxpayers' standpoint but which angered a lot of big companies. That particular rail company which I shall not name was almost alone in standing up in this country saying what the tax administrators around the country are doing on behalf of many States makes good sense and we support it.

This company exhibited some strength and courage in doing that, so I have some fondness for this company because they stood up and said this was the right thing to do when almost all other corporations in the country were squealing and were angry because finally the States were getting from them the taxes that they had legitimately owed for many, many years.

I say that only to demonstrate that I do not offer this because there is any merger pending or because there is any railroad that has an interest in one thing or the other. I offer this because I offered the amendment on the telecommunications bill, and I would offer the same amendment on a piece of legislation dealing with airline mergers.

It seems to me that we ought not continue a circumstance where the regulatory body, that is the old ICC and now the transportation board, will make decisions about whether a merger is in the public interest based on a range of factors that is spelled out in current law, which include, for example, the effect of the transaction on the adequacy of transportation, the effect on the public interest of including or failing to include other rail carriers, the total fixed chargers that result from the proposed transaction, the interest of carrier employees affected by the proposed transaction, and whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

These are the criteria that the Board itself will use. But the Board might decide to give substantial weight to two or three of the top criteria when, in fact, you might have a Clayton 7 standard here which clearly on its face is demonstrated not to be in the public interest with respect to this merger. I am not talking about this particular merger that I referred to earlier. I am talking about any merger. The Justice Department might evaluate that and say, ''This is not in the public interest if you use the Clayton standard.'' And yet the regulatory Board might say, ''Well, we view the top three areas here, top three factors, as having sufficient weight, so that we think this makes sense for our country.''

My point is that I want those who are experts in our Government in the area of antitrust enforcement to have a valid and legitimate role in measuring whether a proposed merger in the railroad industry meets the test, meets the test for all Americans and for consumers. Is this in the public interest? Will it substantially lessen competition and tend to create a monopoly in any line of business in any section of this country? If so, in my judgment, it should not happen. It might be good for a couple companies now or in the future. But if that is the case, if it does not meet that test, then it should not happen.

I want the Justice Department to be able to take that measure and provide that information to the transportation board, and to have substantial weight and deference given to the Justice Department's recommendation. That is all this does. It does not do any more than that. I hope that, as we talk

through this here in the next half-hour or hour, colleagues will see fit to support it.

The Senator from Nebraska is correct, I offered a similar amendment to the telecommunications bill on essentially this same kind of issue. He is correct about that. But it is, in my judgment, the right thing to do for our country, the right thing to do to ensure vibrant competition in a free market system. I hope people will look at this amendment and think it has merit and decide today to support it.

Mr. President, I would be happy to yield the floor at this point. I see my colleague, Senator BOND from Missouri, is seeking the floor. Let me yield the floor to him.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I am very pleased to rise in support of the amendment by my friend and colleague from North Dakota. I have a very clear-cut philosophy on economic issues. Government regulation is the least desirable and the least effective way to make sure that the customers—you and I as customers; we may be customers down the line—but as customers of businesses which are buying from other businesses or seeking services from them, we are all best served if the free market, rather than Government regulation, tells us how the service or products are delivered, what cost they are, and how readily available they are.

Now, to achieve this, it requires there be competition. You cannot rely on the marketplace to regulate provision of services or goods or their cost if there is no competition. We have in law the Clayton Act, section 7 of the Clayton Act, which requires mergers in almost any other industry to be judged, and they cannot go forward if the proposed transaction would substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country. That is basic American philosophy going back almost 100 years. We need in this country to have the marketplace work. And the marketplace works when there is competition.

Right now we have a situation in rail mergers under the Interstate Commerce Act that competition is not necessarily a criteria. The role of competition in rail mergers, in my view, should be the same as its role in any other mergers. If it does not leave a marketplace which can work, then we should not permit it. That is why we have laws against monopolization in section 2 of the Sherman Act and section 7 of the Clayton Act. That is why we have the FTC. That is why we have the Department of Justice. That is why we have access to the Federal courts.

The amendment proposed by the Senator from North Dakota would just say that we have to apply this same test when it comes to rail mergers. It seems to me to make a lot of sense.

Mr. President, I really got involved in this when shippers in my State expressed concern about their ability to both ship grain out in small lots of several cars, not unit trains, and purchasers who purchase inputs coming in by rail said, ''Hey, we need to have competition so we can get the best service at the best price.''

We had our second joint hearing of the Senate and House Small Business Committees on November 8 in the House Office Building. I thought I would just share with my colleagues a couple of the points made by the witnesses. Obviously, we did not have jurisdiction over this, but as a matter affecting small business, we advised the distinguished chairman and my predecessor in the Republican slot on the Small Business Committee that we wanted to hear from the shippers and others affected. We tried the get a good cross-section. But several of the points made by those witnesses I think should be called to the attention of my colleagues.

Prof. Curtis Grimm, who is professor and chair of the Transportation, Business, and Public Policy, College of Business and Management at the University of Maryland, College Park, said:

> Under current standards, the ICC could approve a significantly anticompetitive merger, based on claims of speculative efficiency gains which would outweigh competitive harms.

Mr. President, just because two companies want to merge and they say they can be more efficient, it does not necessarily mean that competition and the people they serve are going to benefit if we wind up with a monopoly situation. Sure, a lot of people would merge if they could take care of all their competition and be the only supplier in the marketplace. We have seen that before.

We have seen that in transportation. Did you ever try to buy a ticket on an airline flight between two cities where there is only one carrier? Wow. It is usually cheaper to go around the world, no matter how close those two cities are. There was a time when only one carrier served Kansas City and St. Louis. You had to mortgage the home to fly back and forth. When competition comes in, you are going to find the best price and the best service. The same thing ought to be true, I believe, in other forms of transportation and, in this instance, in rail mergers.

One of the witnesses testifying before us, Ed Emmett, is the president of the National Industrial Transportation League, the trade association representing over 1,000 shippers. He said:

> We are at a critical juncture in U.S. rail transportation policy. It is essential that the Congress act now to change the standards for judging rail mergers to focus more on competition.

A fellow who relies on rail transportation for his inputs and his products, James F. Jundzilo, transportation manager, Tetra Chemicals in Texas, testified:

> We must put more focus on competition, involve anti-trust laws, competition in the public interest will then be maintained and protected.

A manager of Lange Co. of Conway Springs, KS, William F. York, said:

> The current merger standards should be revised to focus more on the loss of competition and less upon so-called ''efficiency gains'' or allow the Department of Justice to review rail mergers as they do for other modes, including airlines.

Finally, one other private sector witness, Fredrick D. Palmer, General Manager and CEO of Western Fuels Association, said:

> I submit that a virtually deregulated railroad system in serving a virtually deregulated electric utility industry cries out for the sorts of antitrust regulation to which both the electric utility and telecommunication industries are subjected.

Finally, we were pleased to have testify before us the Secretary of Agriculture, the Honorable Dan Glickman, who said:

> If this latest railroad consolidation is approved, there will only be two major rail carriers west of the Mississippi. This could have serious implications for the rates and availability of rail transportation for the agriculture industry because of the reduced level of competition.

It is for that reason that we should provide the Clayton Act section 7 standards to judge rail standards. I am advised the groups supporting this amendment include the National Industrial Transportation League, the Society of Plastics, the American Farm Bureau, Western Fuels Association, AFL–CIO, Railway Labor, Western Shipper's Coalition, the Chemical Manufacturer's Association, and I believe that the administration also supports this amendment.

Mr. President, I think as we move toward a leaner and more efficient, more streamlined Federal Government, many functions of the Federal Government are excess, we do not need them. And there is one real area where we can get rid of a lot of regulation. It is where the marketplace forces competing suppliers of services or goods to compete on the quality of the service and the price.

You do not need Government bureaucracies. You do not need rate setting. You do not need the whole plethora of rules and regulations for Government to run it if to make a buck they have to provide better service or better products at a better price than their competitors.

That is the way we get the best deal. That is where our country has been most successful in making progress. I urge my colleagues to support this amendment.

Mr. President, I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I rise in opposition to the Dorgan amendment. Let me make some general remarks on the issues surrounding antitrust and some of the standards that are used.

First, let me point out that this amendment is an attempt to change

the way the ICC looks at the competition among rail carriers, particularly whether the reduction in number of railroads at any one point is harmful.

Changing the standards by which rail mergers are judged is very complicated. The current public interest standard is well established and has been in place for 75 years. Changing them now, particularly while two class one railroads are in a merger proceeding, without fully understanding how these changes affect railroads, shippers, States and even the financial markets, is not the approach this committee should take without fully understanding what we are doing. Unintended consequences could easily result.

We have one of the most efficient, if not the most efficient, transportation system in the world. A large part of the system is the level of competition that exists between the transportation modes and within the modes. Merely trying to guarantee competition in the rail industry by changing how the ICC looks at competition could easily backfire.

In the last 15 years, there have been roughly a dozen rail mergers, a tremendous increase in concentration when just measured by the number of railroads. However, at the same time, real rates have fallen up to 50 percent with the decreases occurring every year across all major commodity groups and in all major geographic areas.

This cannot just be attributed to deregulation, because without ongoing effective competition, the productivity gains that deregulation made possible for the railroads would not have been passed through to the shippers.

Without fully understanding what we are doing in this area, we could easily turn back this trend, even though we have the best intentions. As a result, I urge that this amendment be defeated. I urge my colleagues to vote against it as well.

Now specifically, the ICC does not apply or follow antitrust law, though it pays very close attention to competitive issues. The rail system is the underpinning of our entire economy, and many rail efficiencies can be achieved only through mergers. The ICC applies a public interest standard, under which the public benefits, competitive or otherwise, of a merger, are balanced against any detriments, again competitive or otherwise, of a merger. This process allows the Commission to approve consolidations, even if they otherwise would violate antitrust laws.

Rather than applying a narrow DOJ-type antitrust analysis, the Commission has consistently looked at all factors in deciding the competitive impact of rail mergers and has found pure concentration measures, such as the number of railroads serving a point, to be too simplistic a standard.

The UP/MKT merger is a good example. In that case, a number of markets went from three railroads to two. Various parties, including the Justice Department, argued that there would be a reduction in competition in those markets and that conditions should be imposed to introduce additional rail competition in them. The Commission rejected these arguments, finding that the continued competition from a strong second railroad, the increase in competition from the merged system's introductions of new single-line routes and other service improvements and other competitive constraints, such as modal and source competition, would keep competition vigorous.

In fact, the Commission was right. Union Pacific, at the request of an agency in California, had studied the rates in these 3-to-2 markets before and after the UP/MKT merger which was consummated in 1988.

What they found was that in all cases, rates had decreased significantly, confirming the Commission's conclusion that competition would be intensified by moving from three railroads—one of which, MKT, was a weak third—to two strong rail competitors.

The evidence is overwhelming that a mere reduction in the number of railroads does not stifle competition and, in fact, can enhance it where the effect is to add to the efficiency of the merged carriers and to their ability to offer new services.

Furthermore, there is ample proof all across the country that where markets are served by two railroads with broad, equivalent networks, rail competition is intense. Perhaps the best example is a precipitous drop in Powder River Basin, WY, coal rates following the entry of CNW into the basin as a competitor, in partnership with UP against Burlington Northern.

This experience of huge declines in the rates for the transportation of Powder River Basin coal is flatly incompatible with any theory that two railroads in a market will collude to keep prices at or near the level where other constraints, such as truck or product competition, would cause a loss of traffic. Other examples are the intense two-railroad competition throughout the Southeast, between Norfolk Southern and CSX, and for Seattle/Tacoma and other Washington and Idaho traffic between BN and UP.

The number of railroads alone is not what matters, it is the effect of the merger on competition. Absent some compelling reason for change, which has yet to appear, the current process should stand.

Mr. President, let me make a few more remarks, and if other Senators come to the floor, I will certainly yield to them, but I want to continue to state my opposition to the Dorgan amendment.

Since 1920, due to the unique place railroads hold in our economy, Congress has consistently found that applying a pure antitrust standard to rail mergers is inappropriate.

Railroads carry roughly 40 percent of the freight in this country. These include 67 percent of new autos, 60 percent of coal, 68 percent of pulp and paper, 55 percent of household appliances, 53 percent of lumber and 45 percent of all food products. Much of this material is delivered on a just-in-time basis.

What is impressive about these numbers is that, unlike the trucking, ship, barge, and aviation industries, which operate over national systems and which are built and/or maintained by Government and open to all operators, the goods that move by rail are transported over fixed, regional systems. Due to the regional nature of railroads, much more interchange occurs than in other modes of transportation. That is, railroads hand off cargo to one another while other modes of transportation have very little of this type of interchange—truck to truck, barge to barge.

As a consequence, there are natural efficiencies in these other modes that do not readily occur in the rail industry. To achieve these types of efficiencies in the rail industry, there must be consolidations. Mergers and consolidations allow the rail industry to maximize the use of its tracks, cut down on interchange points, get the most out of switching yards, consolidate terminals and, in short, provide better service to its customers at the lower cost.

In the past, Congress has recognized that rail consolidations cannot occur if rails are subject to the normal antitrust tests imposed on other businesses. What makes the ICC test different? There are three major components.

The first is the use of the public interest standard. When looking at a merger, the Department of Justice focuses almost exclusively on possible reductions in competition. Under a pure antitrust review, the Justice Department could deny all rail mergers, which is what happened before the public interest standard was adopted. The ICC, on the other hand, takes into account both the public benefits of a merger, in terms of increased efficiencies, better service and enhanced competition, and any harms, in terms of reduced competition and loss of service.

The ICC also has the power to condition mergers to take care of anticompetitive concerns, while the Department of Justice could try to negotiate conditions, it does not have the same power and discretion as the ICC. As a result, the ICC can condition and approve mergers that are in the public interest but might normally fail a review by the Department of Justice.

The second is the open and well-developed process the ICC has for reviewing rail mergers. The process includes discovery, the development of a detailed record and a full and fair opportunity for all affected parties, including Federal agencies, States, localities, shippers and labor to be heard.

The DOJ process, on the other hand, is a closed informal ex parte process in

which DOJ speaks with only those persons it chooses to and hears only the evidence it chooses to. There is no opportunity for discovery and no opportunity to learn and to respond to what others are saying.

Taken together, these first two points are extremely important. Railroads cannot be duplicated. The lines that exist today are essentially it. While spur lines and short lines may be built, there will be no more railroads built from Chicago to Los Angeles or New York to St. Louis, not in the near future at least.

A fair, impartial system bound by rules and precedent where all parties can be heard is important in deciding how these systems are rationalized. A DOJ review is far more subjective. All parties may not be heard and DOJ can decide which types of traffic patterns to look at, thereby making the process unpredictable from one case to another, from one administration to another.

So I think, in looking at this, we have to look at what we are dealing with in the uniqueness of railroads. We will not have more railroad lines built in this country in terms of major routes from Chicago to Los Angeles or New York to St. Louis. We will have those remaining. But the question is a public interest standard allows some flexibility on the part of the rulemaking body which will now be in the Department of Transportation.

The third component is the actual approval. The Department of Justice does not approve mergers, it merely indicates whether or not the Government will bring suit to stop it. I think now under the Hart-Scott-Rodino standard, companies can get an opinion before they actually go to the expense of getting together.

The ICC process brings with it a formal approval and preemption of other laws. This is important for a number of reasons. Without formal approval, abandonments or line sales contemplated by a merger will have to be approved by another agency. State laws designed to prevent or hinder mergers will not be preempted. This is particularly important to the free flow of interstate commerce. Further, private parties would not be prohibited from bringing suit to seek conditions or block the transaction.

Finally, the Rail Labor Act would not be preempted. This is critical. Most railroads have 13 different unions with hundreds of different contracts. Absent the preemption of the Rail Labor Act and the imposition of labor protection conditions, the merging carriers would be forced to negotiate implementation agreements with each union under the Rail Labor Act. Because rail transportation is so vital to the economy, this act was created ''to avoid any interruption to commerce.'' The act achieves this goal by obligating management and labor to negotiate using a long, drawn-out process. Using this act to negotiate the implementation of a merger would take years. As a result, without a formal approval, even if a merger were approved by the Department of Justice it would more than likely be years, if ever, before it could be implemented.

At the heart of this debate is, What is best for transportation policy? The more than 500 railroads that are in existence today are an integral part of our country's transportation system and are a linchpin in our economy. We have the best rail system in the world. The long-established national railroad merger policy has served our country well. Absent some compelling reason, there is no basis for gambling with the future of an industry that is so important to our Nation. That is an important point.

The second point is, the Senator from South Dakota spoke of deregulation. I am probably much less a fan of deregulation than he or some others in this Chamber. There are certain areas in our country where regulation, I think, is critical, where, without regulation, you get price gouging, you get pricing outside of a free market that disadvantages consumers. I will give some examples of that.

While I say this, I am not opposed to all deregulation. Some of it has been just fine. But the Senator from South Dakota and I come from States that are sparsely populated, and we often, especially in the area of transportation, suffer the consequences of a deregulated environment in which, without competition, they extract prices that are unreasonable.

I used an example of the airline industry in the Commerce Committee that the Senator from South Dakota will recall. I held up a picture of a big Holstein milk cow, called Salem Sue. It is the world's largest cow. It happens to be metal, but it is the largest cow. It sits on a hill about 25 or 30 miles from the airport in Bismarck, ND, if you drive down Interstate 94. I pointed out, if you get on a plane here in Washington, DC—and I admit, there are probably not a lot of folks who have an urgent desire to go see the world's largest cow just for the sake of going to see the largest cow—but if your desire is to go from Washington, DC, to see the world's largest Holstein cow, 30 miles from the Bismarck airport, you will pay more money for that trip than if you get on an airplane in Washington, DC, and fly to London to see Big Ben.

Or, let us decide you want to see Mickey Mouse and decide to fly to Disneyland in Los Angeles. You fly twice as far and pay half as much as getting on an airplane here and flying to Bismarck. Question: Why would that be? Answer: Because we do not have substantial competition. We do not have the kind of competition in the airline industry that you have if you are in Chicago or Los Angeles. There, if you show up at the airport you have dozens of choices, all competing against each other, and the result is attractive choices at lower prices. But, with deregulation in the airline industry, we have fewer carriers, fewer choices, and higher prices.

Now, deregulation is not always a boon to areas of the country that are sparsely populated. When you talk about deregulation with respect to railroad carriers, you must find a way, it seems to me, to provide protections for consumers. My concern about all of this is that the consumers be afforded an opportunity to have a price in the open market system or the free market system that is a fair price. We can foresee circumstances, and we have already seen some in this country, where the prices charged in areas where there is not substantial competition are prices far above those that should be charged.

I mentioned earlier that my amendment is not directed at any carrier or any company or any merger. I mentioned I was interested in the telecommunications legislation, and I rose to offer an amendment including the Department of Justice there. I also have been involved in similar issues.

About 3 weeks ago, I asked the Banking Committee in the Senate to hold hearings on bank mergers. This is not a newfound interest of mine. I was on a program awhile back and they asked me about my interests in having hearings on bank mergers. We were talking about a specific merger where two very large banks were combining and merging to be a much, much larger bank. They said, ''Does that not make sense? Two banks become one and you are able to get rid of a lot of overhead and lay off 6,000 or 8,000 people. Does it not make sense to be more efficient?''

I said, ''Following that logic, it makes sense to have only one bank in America, just one. That way you do not have any duplication. Of course, you do not have any competition either.''

Following this to its extreme, this notion of efficiency without caring much about what it does to the free marketplace and without caring much about what violation occurs to the issue of competition, I suppose you could make a case that in every industry the fewer companies the better, because the fewer companies the more efficient you are going to become. You can lay off people. Of course, it would not be very efficient for consumers, because you can then engage in predatory pricing and no one can do very much about it.

The point I am making is, I am not here because of a railroad or a merger. I have been involved in the issue of bank mergers, calling for hearings at the Senate Banking Committee in recent weeks on that. I have been on the floor on several other merger issues. I hope that the Senate will take a look at this and decide this makes sense. If it does not, at the next opportunity I will again raise this issue.

Frankly, there are not many people in the Senate, or the House, for that matter, who care to talk much about antitrust issues. First of all, it puts most people to sleep. You know, it is

better than medicine to put people to sleep. Nobody cares much about it. Nobody understands it much. It is, to some people, just plain theory. But, if you are a shipper and you are somewhere along the line someplace and the company that has captured the competition and is now the only opportunity for you to ship says to you, ''By the way, here is my price; if you do not like it, tough luck,'' all of a sudden, this has more meaning than theory.

If you are a traveler on an airline and you have no competition when you used to, but now the only remaining carrier that bought its competition and became one says to you, ''By the way, here is my price; if you do in the like it, do not travel,'' then this is more than theory.

That is what persuades me to believe that in a free market system, if you preach competition but do not care very much about whether meaningful competition exists, or whether we have adequate enforcement of antitrust standards, then in my judgment you do no favor to the free market economy.

I hope people will consider this on its merits and consider that it would be wise for our country and for public policy to ask that this legislation be amended with the amendment I have offered, along with Senator BOND.

Mr. President, I yield the floor. I make the point of order a quorum is not present.

The PRESIDING OFFICER (Mr. THOMPSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, I rise to speak against the Dorgan amendment.

I do very much appreciate the chairman of the committee putting forward this legislation. Our budget resolution envisions that the ICC will go out of existence. I think it is important that we pass this legislation. But I do not think it was the intent of the committee to change all the rules under which we have been operating as it concerns mergers in this area. I think turning over the power to the Department of Justice and changing the criteria that are being used for antitrust purposes would not be a very good thing for us to do, and there is no reason to do it. We are talking about saving money here. We are talking about doing away with the duplication of administration. I do not think we have to also change all of the rules and the precedents that have been set for the last 70 years in railroad mergers.

There are many people who have legitimate concerns about some of the railroad mergers that are being considered right now. But these were brought into play before we brought this bill to the floor. And I think to change the rules is not necessary, nor desirable. I think we have the capabilities to judge any mergers. We have the ability to judge the issues under the standards that we have had before in transferring that to the Department of Transportation.

The second reason I think it is important to keep the standards we have is that the Department of Transportation and the new Board that will be created will have the transportation background. They will specialize in this area. That will be their area of expertise and concern. I do not think it does us any good to go to the Department of Justice, which has so many other areas of interest, and I do not think that having this transfer does anything for the merits of the issue, and it could hurt by changing precedent that has been in place.

One of the things that is so important in our judicial system is the value of precedent. We place a great deal of emphasis on being able to determine from what has happened in the past what will be allowed in the future. That is one of the ways that businesses make their decisions. They would look at a merger, they would look at a precedent, and they would make a business decision if this is something that would go through and what the concerns would be.

I think it is important we keep that value of precedent so that we will have an orderly business climate that allows people to make good business decisions without disrupting 70 years of precedent in this area.

So I hope that we can defeat the Dorgan amendment and stick with the committee bill. I think it is a good bill. It has many merits. It is certainly going to save money.

We are on the road to eliminating the ICC because it is not necessary. Let us not throw out the value of what has gone on in the past just because we are putting it into a more efficient system. I think it could cost us much more in the long run and certainly cost competitiveness and cost to customers if we increase the regulatory environment and therefore cause people to have to raise prices. So I hope we can defeat this amendment, and I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENDING AMERICAN TROOPS TO BOSNIA

Mr. INHOFE. Mr. President, I feel compelled today to make a couple of statements about the President's message last night.

I am very disturbed at what is happening, and I think all of America needs to know what is going on. I commend the President on giving a beautiful, persuasive speech, as he is very good at doing. However, I suggest, Mr. President, that as we are speaking now and as time is creeping by, our troops are on their way to Bosnia.

It is my understanding that the distinguished Senator from Colorado, who will be here in just a moment, made a trip over Thanksgiving, which is essentially the same trip I made the week before, into the northeast sector of Bosnia, which is the area where our troops are going to be. A number of people have gone over to Bosnia but have not gone beyond Sarajevo and do not really have a feel for the environment in which our President has this obsession of sending our American troops.

Mr. President, last night he talked about morality and about what our moral obligation is in Bosnia, and the fact that we have a moral obligation to see how many people we are going to be able to save from the brutality that could be taking place there.

He talked about our commitment to NATO. And I would like to throw out a couple of ideas, a couple of thoughts. Mr. President, when I went to Sarajevo it was the middle of a blizzard, a snowstorm. We had a hard time getting up there. There were not any Americans up there. There were not any Americans going to the northeast sector, that area around the Posavina corridor and Tuzla, and south of Hungary, which is an area where our troops are going to be deployed from the 1st Armored Division where they are being trained for this kind of deployment. And that may be happening and is happening, I suggest, as we speak.

I heard several people say that we need to wait until we have hearings and let some time go by. But each hour that goes by, the American people need to know the President has a strategy to get our troops over there, to put us in a position where we are going to have to, by denying the authorization of sending troops into Bosnia on the ground, we are turning our backs on troops who are already there. And this is a position that we are now getting into. And each hour that goes by we are getting in deeper and deeper.

I can recall not being able to get up there until General Rupert Smith, who is the successor of Michael Rose as the commander there of the U.N. forces in Bosnia, he agreed to take me up. And as we went up we went over almost every square mile of that area that is called the northeast sector, where our troops are going to be deployed, not more than 100 feet off the ground—because I have a background in aviation,

I know we were not anywhere higher than that—we were in the middle of a blizzard.

Mr. President, this is not the Rocky Mountains we are talking about. This is an area of cliffs and caves. For the first time I could see why during the Second World War that they were able to withstand the very best that Hitler had to offer on a ratio of 1 to 8 because of the very unique geography we are dealing with.

As I looked down I thought, there are not any roads down there, there are not any valleys, not the traditional valleys that you would have in the terrain that we think of as being mountainous terrain. And so all these tanks and all these armored vehicles would not really have any way to maneuver in that area.

And, Mr. President, I think the President of the United States is putting us in a position where it is going to be too late. You know, we could come back and talk about whether or not we should send troops over, whether or not there are strategic interests as far as our Nation's security is concerned. And by that time, we are going to have our troops over there.

I think the President is looking at—he has been talking about 20,000 or 25,000 troops for so long now, for 2 years, I think it is an obsession with him. He is no longer thinking of them as being faces of real human beings. I think it is a faceless gesture when he says, we want to send 20,000 American troops into Bosnia.

But I went up to where the 1st Armored Division was training these young men and women who will be the first to go, who I suggest—I had breakfast with many of them in the mess hall. And they are on their way to Bosnia right now as we speak. And those individuals all asked me, ''What is our mission? We don't understand what our mission is.'' Of course, I tried to be as optimistic as possible. I said, ''We're always behind our troops. Whatever happens, we're going to be supporting our troops.'' But as far as the mission is concerned, I do not know what the mission is.

In the speech last night the President kept using the term over and over again—he said, ''The mission is clear and limited.'' But he never said what the mission was. It is a humanitarian mission. And I think we have about half the world that is covered with problems, with ethnic cleansing, with human rights violations. I am not sure whether we feel that we—or the President feels that we—have the resources and the military assets to go out and take care of all these problems. Obviously, we do not. We are operating on a defense budget now that is down comparable to what it was in 1980 when it could not afford spare parts. Yet we are taking on all these humanitarian problems around the world.

I had occasion to talk to James Tayrien. James Tayrien is from Poteau, OK. He would be one of the first ones to go. I came home and talked to his mother, Estella, down in Poteau. She asked me the same question. I cannot answer it. It is very easy to get engaged in these things and send troops in, but it is hard to bring them out.

Look at Vietnam. It was very easy to send them in. Look at the other cases that we have. Mission creep. If there was ever a classical environment for mission creep, that is it over in Bosnia. In fact, we have already crept. The mission was to be peacekeeping. Now it is peace implementation. There is a big difference, Mr. President, between peacekeeping and peace implementation. Peace implementation is the recognition there is no peace to keep right now.

The President last night said, of course, the war is over. The war is not over. We went up there. We were in Tuzla. We could hear the firing, the firepower that was going on. It has not stopped. And we are dealing with three major factions over there. And I suggest to you that one of the factions was not in Dayton, OH. Milosevic does not speak for the Bosnian Serbs.

It was my experience—and I see the distinguished Senator from Colorado is here. He is the only other Senator or House Member, to my knowledge, who has been in the northeast sector, in the Tuzla area. The point I am trying to get across here is that those people who are around that peace table are not speaking for the factions that were firing guns as we were up there just a couple weeks ago.

I mean, they are up there. They could be Croats. They could be Serbs. They could be Bosnian Serbs. They could be Moslems. We do not know who they are. They could be any of these rogue factions. We hear a lot about the major factions that are over there. We know that three major factions have fired on their own troops just to blame the other side for sympathy. Anyone with that mentality is going to be firing on American troops. But we do not say anything about the other rogue factions, such as the Black Swans, the Arkan Tigers. We have Iranians. We have all kinds of factions up there, more than just three major factions.

I would like to ask the Senator from Colorado, if that is the same environment as I have just explained that he experienced just this past week? I am sure he would have rather been doing something else on Thanksgiving. But it is my understanding he was up in that northeast sector during Thanksgiving. Is that correct?

Mr. BROWN. I did. We had taken a plane, U.N. plane into Sarajevo and got a U.N. crew, a Norwegian helicopter crew, to take us in that region. And we did a flyover over much of that area. I must say the Senator's description is right on.

What I found was in that area that is absolutely ideal in terms of guerrilla warfare. What I was surprised to find, and I think Members may be surprised to find, is that the plan is not to set up a border and patrol of that border. In other words, in fact, they indicated many of these areas where the line has been drawn, it simply does not even correspond to things on the ground. It is not the peak of a hill or the depth of a valley or the flow of a river. It is a line on the map that has not been translated on the ground.

And their plan is not to erect a fence or even to check people coming across. There would be free flow of people across it. But I found very rugged terrain, and I found the roads that were there were very narrow, and very heavy timber cover so that it would be very difficult to spot things from the air. And it would be almost impossible to get our armored personnel carriers and our armored vehicles, tanks, into full play in that region. It is as difficult a situation from a terrain point of view as I have seen almost anywhere.

Mr. INHOFE. Let me ask the Senator from Colorado, since this was about a 10-day period between the time I was in the northeast sector of Bosnia, south of the Posavina pass and south of Hungary and north of Tuzla, if he did have occasion to speak to any of those who were in command up in Tuzla, such as General Haukland?

Mr. BROWN. I did talk to the Norwegian general. He said he would be relieved when the U.S. troops came in. I also talked to Gen. Rupert Smith in charge of the U.N. forces there, as well as a discussion at the Embassy with all the U.S. forces. As the Senator knows, there is a number of U.S. military personnel who are stationed in Sarajevo. They indicated a couple of things. One, none of them expected this to be wound up within a year.

Mr. INHOFE. This is the question I was going to ask the Senator. Even last night we talked about 12 months.

When the Senator and I sat next to each other at the Senate Armed Services Committee, when we had Secretary Perry and General Shalikashvili, and we asked the question that they had written up, ''Are you going to commit yourself to 12 months, to a time period after which we withdraw and we come back?'' they said, ''Yes, we are absolutely committed to that.''

Did you find anyone, who were the military people, either with NATO, the United Nations, with any of our NATO partners, or anyone up there in the Tuzla area who felt there is even a remote idea or notion we could be out of there in a 12-month period as far as achieving peace?

Mr. BROWN. I talked to Norwegian personnel, military personnel from Iceland.

There were doctors there from Sweden. I talked to a general from Great Britain. I talked to U.S. military personnel. I talked to Embassy personnel. I talked to Bosnian officials. Nobody, not anyone, none of them thought this mission could be achieved or completed within a year.

Mr. INHOFE. That is exactly what they thought 10 days prior to that time. I have these horrible visions of what happened with Somalia. I can remember when we were trying to bring our troops back from Somalia, and we sent resolutions to President Clinton month after month to bring our troops back from there.

It was not until 18 of our Rangers were murdered and the mutilated corpses were dragged through the streets of Mogadishu that the American people finally woke up and said, ''We want them back. We don't have strategic interests there that are worth this kind of a sacrifice.'' I see similar things like this are happening over there.

When you talk about the morality of the issue and the fact that we are, in a sense, rewarding those individuals who are guilty of the most serious war crimes, because we are now saying we are on their side and we are doing this, this is something that I think we need to talk about before a decision is made that we are going to go along with this, because I see that happening.

I see discussions taking place in this Chamber and outside the Chamber, ''Well, let's wait until we have some hearings. Let's wait until this,'' and as this is happening, our troops are being deployed over there.

Mr. BROWN. Let me say to the Senator, if I can, in response, I think it is very analogous to what happened in Somalia in this respect: There is not a clear military plan. There is not a clear plan as to what we are going to do once we are there.

For example, one of the things you could do is put up a fence and man a border. That is not what they plan to do. One of the things you can do is you can stop people from moving from one side of a border to another, stemming terrorism, guns, ammunition. That is not what they plan to do. When I asked what they do plan to do with the troops there, there was no clear answer by anyone.

The reality is, the President is committing troops to that area for show. There is no clear military plan, and there is no clear, effective way to defend or protect those troops.

I might say, it is cold as can be right now in Bosnia. There is no structure there for our troops to stay in. There is no structure there for our troops to stay in. There is no supply of clean, healthful water. There are no normal sanitary conditions. There is no established supply line at this point. I suspect there will be at some point in the future. But this is a catastrophe in the making, and I believe it shows a reckless disregard for those who serve our country.

I think we have an obligation to people who put on the uniform of this Nation. You can agree or disagree with the mission, you can agree or disagree with the personalities, but we have an obligation when someone comes and puts on the uniform of the United States to make sure that we do not endanger their life without a real purpose.

Some will say we should not endanger their life. If you are not willing to put your life on the line, you should not be in the military. I understand how these men and women would risk their lives, and our freedom is important enough to do that. But, Mr. President, and I say to the Senator from Oklahoma, keeping our prestige high or avoiding an embarrassment because someone made a commitment they should not have is not a reason to commit American troops to a situation where they cannot defend themselves or cost American lives.

We have an obligation to people who put on that uniform to stand beside them and do all we can to protect them, and it is very clear—it is very clear—that we are not able to do that in this circumstance, and, moreover, we have not even supplied them with a purpose or a reason for them to sacrifice their lives.

If they were there to defend freedom, I think the Senator from Oklahoma and I would be right there with them to stand behind them and support them and to encourage this action to stand up for freedom. But this is not that effort. This is an effort to save face in the world community, and I think it is much more important to stand behind our troops.

Mr. INHOFE. Let me ask the Senator from Colorado——

Mr. PRESSLER. If my friends will yield for a split moment, we are trying to get a vote ordered at 5:15, and I have to make a unanimous consent request. If I can do that, then you can go back into your mode, because they are going to hotline this.

Mr. INHOFE. I yield to the Senator.

INTERSTATE COMMERCE COMMISSION SUNSET

The Senate continued with the consideration of the bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. PRESSLER. Mr. President, I ask unanimous consent that a vote occur on or in relation to the Dorgan amendment at 5:15 this evening and that the time between 5 p.m. and 5:15 be divided: 5 minutes under the control of Senator PRESSLER; 5 minutes under the control of Senator EXON; and 5 minutes under the control of Senator DORGAN.

Mrs. BOXER. Reserving the right to object, Mr. President, I would like to add to that that I have an opportunity to lay aside the Dorgan amendment and offer an amendment. I will only need 5 minutes to speak on it, and it, too, can be laid aside. If I have that opportunity, then I will not object.

Mr. PRESSLER. Can the Senator offer her amendment at 5 to 5? Would that be OK? I am trying to get to the first vote here. I want everybody to speak as much as they wish.

Mrs. BOXER. As soon as this consent request is agreed to, can I offer it right then and lay it down?

Mr. PRESSLER. My friends will finish their dialog probably by 5 to 5, I guess.

Mr. INHOFE. Yes.

Mr. PRESSLER. Why do you not offer it at 5 to 5?

Mrs. BOXER. So I will get it before the vote on the Dorgan amendment?

Mr. PRESSLER. Yes. I amend that by saying at the hour of 4:55 p.m., the Senator from California will offer her amendment, and then at 5 o'clock we divide up the time.

I want everybody to speak as much as they wish.

Mrs. BOXER. I will not object to that.

Mr. DORGAN. Reserving the right to object, and I will not object, I just observe that the 5 minutes allotted for myself and the 10 minutes allotted for Senator PRESSLER and Senator EXON make it 5 minutes for and 10 minutes opposed. I do not object, but I wish if Senator BOND wishes to come over for support, we could get a minute or two.

Mr. PRESSLER. I will give him half my time.

Mr. DORGAN. I will not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Did the Senator from South Dakota have a further unanimous-consent request?

Mr. PRESSLER. I further ask unanimous consent no amendment be in order to the Dorgan amendment and the amendment be laid aside at 5 p.m.

Mrs. BOXER. That is fine.

The PRESIDING OFFICER. Without objection, it is so ordered.

BOSNIA

Mr. INHOFE. Mr. President, just a couple of other things I wanted to ask the Senator from Colorado.

In that there is a 10-day timeframe from the time he came back and the time I was over in that area, a concern was expressed to me at that time—and keeping in mind that the lines we have now seen on the map near Tuzla, which I am sure the Senator has had a chance to discuss, there is a problem that there are approximately 3 million refugees, if you count them from all throughout that area that those lines on the map are going to preclude at that time, they said more than 50 percent of them would not be able to return to their homelands.

Their concern was that this is going to increase the number of rogue elements that were there, that anyone who thinks there is a peace accord, first thing a refugee wants to do is go home. The fact that they would not be able to return home would increase the number of rogue elements that are around or that join other elements.

The second thing is their concern over what we refer to, and the administration refers to, has never really been defined as systematic violations. There are two ways we can get out of this. One is, 12 months goes by; and the other is if there is a systematic violation, meaning one of the major factions

is violating the peace accord or whatever accord it is they have initialed and they are proposing to sign.

The fact that there is no way for the military, the soldier in the field, to know if there is an uprising of some type or a conflict, whether that is a systematic violation or maybe just some rogue element that is firing upon troops—did they express that concern when you were there?

Mr. BROWN. Those concerns were expressed, and added to this is the fact that the border will be free flowing. You will not have an interdiction at the border. It will be very difficult to tell if the people coming across the border are refugees and allowed to go back to an area that has changed hands, or if they are terrorists, or if they are a military element.

They also expressed great concern about a couple of other aspects. One was a conviction on the part of the military personnel that I talked to—U.S. military personnel—that none of the parties would abide. When I asked, they said, ''Look, the normal pattern here is people sign agreements and then when spring comes, they go ahead and proceed with their plans afoot.'' Frankly, our people who are on the ground were very skeptical that you would see any of the three parties follow these agreements.

The problem, of course, is that you have U.S. military personnel in a position that is very difficult to defend in between them at a point they have wholesale violations of the peace agreements.

At this point, it is very difficult for me to see what it is U.S. personnel accomplish in that area, other than being targets.

Mr. INHOFE. Certainly in a 12-month period, if we are, in fact, committed to a timeframe—and I do not know from my reading and, of course, my experience in the military, of any time we have gone into hostile conflict with a time-oriented departure—it is always a function or an action, something that has taken place.

It was General Huptmann, I believe, who used this analogy, and maybe he used it with you. He said, ''Twelve months is like putting your hand in water for 12 months and you take it out and look down and nothing has changed.'' Twelve months in the Balkans does not mean anything. If we are going to be out in 12 months, those individuals that would be warring factions would be in a position to start up again.

Mr. BROWN. One thing I might say, it will mean the expenditure of $1.5 billion to perhaps $3 billion. I say to the Senator, I suspect this body will face supplemental appropriation requests from the administration that exceed those numbers.

There simply is no way to put down the 20,000 people they are talking about in that region, or perhaps 25,000 they have talked about—my guess is it may be the higher figure—without the expenditures of huge amounts of money in roads, in clearing areas, in some sort of quarters for the personnel that will be there, and the whole infrastructure they are talking about as a backup.

What will be different 12 months from now is an enormous expenditure of U.S. Treasury in taxpayers' money on an enterprise that does not have a defined function or a defined date of accomplishment.

Mr. INHOFE. I think the Senator from Colorado is being very conservative when he quotes the figures of the administration of $1.5 to $2 billion. I have seen figures up to $4.5 to $6 billion.

I recall not too many weeks ago the administration came to this body for a $1.4 billion supplemental appropriation to take care of some of the past humanitarian gestures that were forecast to cost a third or a fourth of that amount. It is hard to talk about dollars when we are talking about human lives.

My concern is if we are concerned, as the President indicated he was last night, about NATO and the integrity of NATO, where is NATO going to be if we go in there and start this thing, the body bags start coming back to America and people start getting concerned as they were as the incidents of Mogadishu? Then we cut and run, which surely we would do at that time. Then, where is NATO and the integrity of NATO?

Mr. BROWN. I think the Senator has put his finger on the entire problem. Before we commit U.S. troops to a role where they are in danger, the Weinberger rules of engagement, I think, provide a good basis.

It seems to me for every American, just simple and basic understanding, before you send troops into combat, you ought to have a clearly defined military mission that is accomplishable, and without that, they should not go.

What we are literally seeing is the use of U.S. troops as international social workers. The fact is, U.S. armed services personnel ought to be used as soldiers to accomplish a military mission. That is what they are trained for. That is what they are accomplished at. That is what they are good at.

For U.S. troops to be used in this function without a clear mission, at least in this Senator's view, is an invitation to a tragedy of the first order.

Mr. INHOFE. I am very much concerned about it, and I know we are using up more time than we should.

Let me just conclude and speak only for myself. I have listened to the President. I thought the President would come out with something new that has not already been part of the debate. There was not one new argument or element introduced into the debate in the President's statement last night.

In the absence of that, knowing that each hour that goes by the President is deploying more Americans into that hostile area, I have to get on record right here in this body, Mr. President, as saying I will fight with every fiber of my being to stop the President from sending troops in on the ground into Bosnia.

INTERSTATE COMMERCE COMMITTEE SUNSET ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized.

AMENDMENT NO. 3065

(Purpose: To provide for the comparable treatment of federal employees and members of Congress and the President during a fiscal hiatus)

Mrs. BOXER. Mr. President, I send an amendment to the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from California [Mrs. BOXER], for herself, Mr. HARKIN, Mr. BRYAN, Mr. BUMPERS, and Mr. FEINGOLD, proposes an amendment numbered 3065.

Mrs. BOXER. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following section:

SEC. . PAY OF MEMBERS OF CONGRESS AND THE PRESIDENT DURING GOVERNMENT SHUTDOWNS.

(a) COMPARABLE PAY TREATMENT.—The pay of members of Congress and the President shall be treated in the same manner and to the same extent as the pay of the most adversely affected federal employees who are not compensated for any period in which appropriations lapse.

(b) This section shall take effect December 15, 1995.

Mrs. BOXER. Mr. President, the purpose of the amendment I have sent to the desk which is sponsored by myself, Mr. HARKIN, Mr. BRYAN, Mr. BUMPERS, and Mr. FEINGOLD, simply says that Members of Congress and the President should be treated the same way as other Federal employees during a shutdown, a partial shutdown, during any period where there is a lapse in appropriations.

Now, Mr. President, the Senate has passed it a couple of times, but I hope it was not a sham when everyone said, ''Yes, we are for it,'' take it by voice vote. We put it on the D.C. appropriations bill. It seems to be stuck there. The other times we passed it, it has not seen the light of day.

I have been around here long enough to know when I am getting conned. This is not happening. Everyone says they are for it, it passes here, and it has not really gone to the President's desk. He supports it.

The reputation of this Congress is at a very low point. The approval rating of this Congress is in the 20's. I submit that one of the reasons, first of all, was the fact that there was a Government

shutdown, that we could not get our job done. We failed.

This Congress did not get the appropriation bills out to the President. This Congress could not even pass a clean debt extension. Chaos is the name of the game around here.

During the Government shutdown, we know there was a lot of angst, anxiety, to Federal workers, for people who needed the Federal Government, for people who want to go to the parks, for veterans who could not get help, for new Social Security applicants who wanted to file their papers, but no sacrifice around here. Our own staff was not getting paid, but we were getting paid. No problem.

Yes, some Members of Congress felt bad about it and gave some money to charity. Some did not take their checks. Some gave their money back to the Treasury. But this was an institutional failure, Mr. President.

There was a poll done in San Francisco, a place that believes there is a very important need for a national Government, and 89 percent of the people responding to the poll of the San Francisco Examiner said Congress should not get paid unless they do their work.

What could be more fundamental than making sure that appropriation bills move forward or, in lieu thereof, a continuing resolution that keeps this Government running?

Now, Mr. President, we have deep divisions in this body on Federal priorities. The Republicans have laid out their budget. It is clear. Mr. President, $270 billion cuts in Medicare, huge cuts in Medicaid, education, the environment. The President says, ''No way.'' We will balance the budget in 7 years, we all agreed, but we need to take a better look at priorities.

Well, that is all well and good, but the fact is we should not be playing games with people's lives, and if we do, we should get penalized just as other Federal employees would.

So we have our disagreements on the level of spending, but we should still get to work, get some compromises going, and move forward as a Nation.

So we have not passed the Boxer-Durbin bill. It is stuck in all sorts of committees. I intend to offer it every single chance I get, on every single bill that I can. I intend to get a vote on it. I will be persistent, and I know around here persistence is looked at in two ways: Some people love it, other people hate it. They especially like it if they agree with you; and if they do not, they hate it. But I am going to be persistent on this. I have been persistent on other things around here. And I will say this. This bill makes eminent sense. Let me read it to you. As an amendment it says:

The pay of members of Congress and the President shall be treated in the same manner and to the same extent as the pay of the most adversely affected federal employees who are not compensated for any period in which appropriations lapse.

This section shall take effect December 15, 1995.

The PRESIDING OFFICER. Under the previous order, the Boxer amendment will be set aside.

Mrs. BOXER. Thank you very much, Mr. President, for your patience.

AMENDMENT NO. 3064

The PRESIDING OFFICER. The Senate will resume deliberation of the Dorgan amendment.

Who yields time?

Mr. PRESSLER. Mr. President, I yield myself 2 minutes to say I urge all Senators to vote against the Dorgan amendment. We have taken care of the problems which the Senator from North Dakota raised in this bill. This is a carefully crafted bill which Senator EXON and I and others have worked out over months of negotiation and this is unnecessary additional regulation. I rise in strong opposition to the Dorgan amendment. I urge all Senators to vote against it.

I reserve the remainder of my time and, Mr. President, I suggest the absence of a quorum and I ask unanimous consent that time be charged equally.

The PRESIDING OFFICER (Mr. ABRAHAM). Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that it be in order for me to offer an amendment at this time and to have it voted on immediately following the vote on the amendment by Mr. DORGAN.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. Mr. President, reserving the right to object—and I do not want to object—some of the Members may want to have a chance to speak on the amendment. I am trying to find a way here to cooperate quickly. But we do not know what the amendment is.

Mr. BYRD. Very well. The Senator makes a good point.

Mr. President, I ask unanimous consent that it may be in order for me to offer my amendment at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3066

(Purpose: To provide for a minimum penalty of 30 years of imprisonment and a maximum penalty of life imprisonment for the destruction of a motor vehicle or motor vehicle facility if a motor vehicle carrying high level nuclear waste or spent nuclear fuel is involved, or for wrecking or sabotaging a train that carries high level nuclear waste or spent nuclear fuel)

Mr. BYRD. Mr. President, today we are considering S. 1396, the Interstate Commerce Commission Sunset Act of 1995. For over a century, the ICC has protected shippers from unfair competition and monopolistic pricing by the railroad and trucking industries. The bill before us reflects the deregulation of the transportation industry, and the declining need for many of the functions of the ICC. But, even as we consider the changing nature of transportation, we must also consider that new threats have emerged against shippers and the Nation's rail and trucking industries. Those threats are not in the indirect form of predatory price gouging, but rather manifest themselves as direct acts of violence and terrorism that threaten innocent bystanders.

We are considering this bill in the wake of the sabotage of the Sunset Limited in the Arizona desert on October 10. That derailment is the latest act of terrorism against the American people, following on the bombings of the World Trade Center in New York City and the Federal building in Oklahoma City. When the ICC was first created, such acts of violence were unknown.

Today, we must act to deter terrorism, and in so doing, must think the unthinkable—namely, that a terrorist could target a shipment of the most lethal of all possible cargoes, high level nuclear waste. This is the most toxic substance known to mankind. Exposure to even the smallest amount—amounts so small that you could not see it—would result in death. High level nuclear waste is not simply lethal, but also long lasting. It can take up to a quarter of a million years for this waste to fully decay, and lose its lethal radioactive character.

My amendment would increase the penalties for an act of sabotage against a train or motor vehicle carrying spent nuclear fuel or high level nuclear waste. Current Federal law stipulates that the penalty for an act of sabotage against a train or motor vehicle is a maximum of 20 years—which means they could be given 5 years, or 10 years, or 2 years—or in the event of a fatality, a minimum of life imprisonment or the death penalty. Therefore, a terrorist who targets a train or truck carrying high level nuclear waste, but who fails in his mission to spread this poisonous radioactive contamination, might receive considerably less than 20 years in prison.

Under my amendment, any individual who commits a ''willful'' or deliberate act of sabotage against a train or motor vehicle used in interstate commerce transporting high level nuclear waste or spent nuclear fuel would receive a minimum penalty of 30 years to life. The current provision of law regarding a fatality would remain in effect.

My amendment is necessary because shipments of nuclear waste and spent fuel are already occurring. Furthermore, there is the possibility of a significant increase in the number of such shipments within the next few years. If that should occur, there would be increased public attention focused on

these shipments. The public would be aware that, under my amendment, any act of sabotage would receive the certain and minimum penalty of 30 years imprisonment.

Past shipments of nuclear waste have crossed through the majority of our States, including my own State of West Virginia. These shipments traveled on many of the primary routes of interstate commerce, and passed within close proximity to major urban areas, and millions of American homes. Thus far, we have been lucky, with no recorded acts of sabotage against these shipments. But the possibility has always been present, since this toxic cargo is carried by both rail and truck.

From 1979–1994, there were 1,282 separate shipments of commercial spent nuclear fuel. Ninety percent of these shipments traveled on the Nation's highways, with only 10 percent traveling by rail. And it is important to note that this figure does not include classified shipments of high level nuclear waste from Department of Energy or military facilities, although my amendment covers those shipments, as well.

Even though more trucks were involved in this commerce than trains, over 70 percent of the total volume of radioactive waste was carried by rail. And, this volume could dramatically increase before the end of this century. Current plans call for this spent nuclear fuel, along with even more high level radioactive waste from Federal facilities, to be deposited in a permanent geologic repository. At the present time, Yucca Mountain in Nevada is under consideration as such a repository. The Yucca Mountain site is behind schedule, and the site suitability study is not due to be released until 1998 at the earliest.

In the meantime, pending legislation would authorize the construction of an ''interim'' storage facility at the Nevada Test Site. This interim storage facility would be used until Yucca Mountain, or an alternative site, is approved. I want to emphasize that my amendment does not address the issues posed by that pending legislation, namely, whether Yucca Mountain, or an interim storage facility, should be made operational.

My amendment, does, however, address the danger presented by the dramatic increase that would occur in the shipments of toxic nuclear waste to either of these facilities. Current proposals call for the shipment of 2,000 to 3,000 metric tons per year, from up to 79 commercial nuclear reactor sites that have spent nuclear fuel and waste stored on-site. Furthermore, this does not include DOE facilities. The interim site, if it is approved and constructed, would eventually receive up to 100,000 metric tons of spent fuel and high level nuclear waste, pending the opening of a permanent geologic repository.

The Department of Energy has not publicly announced which routes will be used in shipments to Yucca Mountain or an interim storage site. However, these shipments would originate at up to 79 commercial sites, as well as Department of Energy facilities, and would therefore likely travel across large sections of our Nation.

But our concern should not be only about the routes that will be used, but also the sheer number of shipments, and the quantity of highly radioactive waste involved. From 1979 to 1994, a total of one ton of spent nuclear fuel was shipped in the United States by commercial facilities. These proposals to build an interim or permanent nuclear waste facility envision shipments of thousands of tons in a single year.

Again, I am not commenting on whether a permanent waste repository or interim storage facility is needed, or whether such shipments should occur. This body has debated that issue in the past, and will do so again in the future.

Regardless of how that debate is resolved, the fact remains that we are currently shipping the most toxic substance known on our Nation's highways and railroads. And we may dramatically increase those shipments in the future. The very least that we can do is to increase the penalty for sabotage against such shipments, in an effort to deter such acts of terrorism from occurring.

Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3066.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . DESTRUCTION OF MOTOR VEHICLES OR MOTOR VEHICLE FACILITIES; WRECKING TRAINS.

(a) DESTRUCTION OF MOTOR VEHICLES OR MOTOR VEHICLE FACILITIES.—Section 33 of the title 18, United States Code, is amended by adding at the end the following new undesignated paragraph:

''Whoever is convicted of a crime under this section involving a motor vehicle that, at the time the crime occurred, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)), or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)), shall be imprisoned for not less than 30 years.''.

(b) WRECKING TRAINS.—Section 1992 of title 18, United States Code, is amended—

(1) by inserting after the fourth undesignated paragraph the following:

''Whoever is convicted of any such crime that involved a train that, at the time the crime occurred, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)), or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)), shall be imprisoned for not less than 30 years.''

Mr. PRESSLER. Mr. President, I think we very much want to accept the amendment, and the Senator from West Virginia would like a rollcall vote on it immediately following this one. I should be clearing with my partner here. But as far as I am concerned we would be delighted to either accept it or have a rollcall vote immediately following this vote, whichever the Senator prefers.

Mr. BYRD. Mr. President, I thank the distinguished manager of the bill.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. PRESSLER. Mr. President, I ask unanimous consent that this vote occur immediately after the vote on the Dorgan amendment which will occur momentarily, I understand.

Mr. BOND. Mr. President, reserving the right to object, this amendment, the Dorgan amendment, was to be debated in this time period. There are some brief points that could be made, and I wonder if the floor manager would include 2 minutes for the proponents and 2 minutes for the opponents so that we may conclude discussion.

Mr. PRESSLER. Just to explain, the times were reserved between 5 and 5:15. Some Senators have to go on to other schedules. We now will have two rollcall votes starting almost immediately. As far as I am concerned, I would suggest we could yield 2 minutes to the Senator. The Senators who had that time were not here. It might inconvenience other Senators is my point, but as far as I am concerned, I have no objection to 2 minutes being added on at this point.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, reserving the right to object, and I will not object, would the distinguished manager ask unanimous consent that there be no intervening debate on my amendment and that there be no amendment to the amendment?

Mr. PRESSLER. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Missouri will now proceed to speak for 2 minutes on this amendment, after which there will be two consecutive rollcall votes without there being any discussion in between.

AMENDMENT NO. 3064

Mr. BOND. Mr. President, I would ask to be notified when 1 minute is gone. I want to give the prime sponsor the final minute.

Basically, the amendment by the Senator from North Dakota says that the Clayton Act standards—will there be lessening of competition in any line of commerce—be applied to rail mergers. All of us have seen the case in airlines where there is no competition

from one nearby city to another and find the cost of that travel is greater than the cost of travel coast to coast. That is because competition is not in effect.

I agree that we ought to get rid of Government regulation, but we need competition to protect the customers in the marketplace, and we can only have competition if the Transportation Board has to apply the same standards to rail mergers it does to other industries.

I urge support of the Dorgan amendment. I reserve the remainder of my time.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. I ask unanimous consent that I be allowed 2 minutes for closing argument.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, I addressed this amendment earlier, and I hope that the Senate will vote it down. It is a violation of the basic principles that we put together with a near unanimous vote, if not a unanimous vote, of the Commerce Committee. This amendment would simply place in the Justice Department a veto over things that should be properly decided by the independent body that used to be the Interstate Commerce Commission and now will be a body under the Department of Transportation.

Once again I say, I think that the Justice Department should be a legal advisor, which they are, in the bill introduced by myself and the chairman of the committee, but this is a bad step in the wrong direction, and I hope the Senate will vote it down.

Mr. PRESSLER. Mr. President, I move to table the Dorgan amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. Mr. President, I might ask the sponsor of the amendment if he wishes additional time.

I yield back the remaining time.

The PRESIDING OFFICER. All time for debate having expired, the question is on agreeing to the motion to table the amendment of the Senator from North Dakota. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 62, nays 35, as follows:

[Rollcall Vote No. 585 Leg.]

YEAS—62

Abraham	Gramm	McConnell
Ashcroft	Grams	Moseley-Braun
Bennett	Grassley	Murkowski
Bingaman	Gregg	Nickles
Brown	Hatch	Nunn
Bryan	Hatfield	Pressler
Burns	Helms	Reid
Campbell	Hollings	Robb
Chafee	Hutchison	Rockefeller
Coats	Inhofe	Roth
Coverdell	Inouye	Santorum
Craig	Jeffords	Shelby
D'Amato	Kassebaum	Simpson
Dole	Kempthorne	Smith
Domenici	Kerrey	Snowe
Exon	Kohl	Specter
Faircloth	Kyl	Stevens
Feinstein	Lott	Thomas
Ford	Lugar	Thompson
Frist	Mack	Thurmond
Gorton	McCain	

NAYS—35

Akaka	DeWine	Leahy
Baucus	Dodd	Levin
Bond	Dorgan	Lieberman
Boxer	Feingold	Mikulski
Bradley	Glenn	Moynihan
Breaux	Graham	Murray
Bumpers	Harkin	Pell
Byrd	Heflin	Pryor
Cochran	Johnston	Sarbanes
Cohen	Kennedy	Simon
Conrad	Kerry	Wellstone
Daschle	Lautenberg	

NOT VOTING—2

Biden	Warner

So the motion to table the amendment (No. 3064) was agreed to.

Mr. EXON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 3066

The PRESIDING OFFICER (Mr. GORTON). At this time, the Senate will proceed to vote on amendment No. 3066 offered by the Senator from West Virginia. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 586 Leg.]

YEAS—97

Abraham	Craig	Hatch
Akaka	D'Amato	Hatfield
Ashcroft	Daschle	Heflin
Baucus	DeWine	Helms
Bennett	Dodd	Hollings
Bingaman	Dole	Hutchison
Bond	Domenici	Inhofe
Boxer	Dorgan	Inouye
Bradley	Exon	Jeffords
Breaux	Faircloth	Johnston
Brown	Feingold	Kassebaum
Bryan	Feinstein	Kempthorne
Bumpers	Ford	Kennedy
Burns	Frist	Kerrey
Byrd	Glenn	Kerry
Campbell	Gorton	Kohl
Chafee	Graham	Kyl
Coats	Gramm	Lautenberg
Cochran	Grams	Leahy
Cohen	Grassley	Levin
Conrad	Gregg	Lieberman
Coverdell	Harkin	Lott
Lugar	Pell	Simpson
Mack	Pressler	Smith
McCain	Pryor	Snowe
McConnell	Reid	Specter
Mikulski	Robb	Stevens
Moseley-Braun	Rockefeller	Thomas
Moynihan	Roth	Thompson
Murkowski	Santorum	Thurmond
Murray	Sarbanes	Wellstone
Nickles	Shelby	
Nunn	Simon	

NOT VOTING—2

Biden	Warner

So the amendment (No. 3066) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3065

The PRESIDING OFFICER. The pending business is the amendment proposed by Mrs. BOXER for herself and Mr. HARKIN.

The Senator from Alaska.

Mr. STEVENS. Mr. President, I am constrained to point out to the Senate that article II, section 1, clause 6 of the Constitution states very succinctly:

> The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected. . . .

In addition to that, the people of the United States have ratified the 27th amendment to the Constitution, which states:

> No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

I intended to make a point of order that this amendment is unconstitutional. In the interests of time, I have been asked not to do that and to permit this amendment to be taken to conference. I want to put the Senate on notice that should this provision come back to the Senate in a conference report, I shall raise that point of order.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I appreciate the fact that the Senator from Alaska is not going to have us vote on the constitutionality of the amendment that is pending. In fact, we have passed a version of this already at least twice in this U.S. Senate.

I think anyone who looks at the legislative history of why we moved not to change pay for Members of Congress until the next election knows it was because of pay raises, first.

Second, I would point out to my friend that we did talk with many various attorneys on this—Senate legal counsel, we talked to CRS.

Mr. STEVENS. Does the Senator have any such opinion from either of the agencies she just mentioned?

Mrs. BOXER. If the Senator will let me finish I will give him a synopsis of what they said and I will be happy to get that to the Senator in writing. There is divided opinion on this. It is a gray area. If the Senator read this

amendment, which I know he has done, there is nothing in this to say we are changing the pay. As a matter of fact, if you look at the last shutdown, every single Federal employee was made whole. The issue was would they be made whole, and many Senators feel, I think on both sides of the aisle, including Senator SNOWE from Maine who actually wrote this with me, that it is very important we not treat ourselves in a different fashion.

So, I say to my friend, I will be happy to send him the opinions and I will, in fact, monitor this myself. Because, I have to tell my friend, this issue is not getting serious attention. It has been kicked around and everyone says what a good idea it is, but it is never becoming law. I will say to my friend, the Senator from Iowa and I are very clearly of a mind that we are going to make this stick. We will work to make this constitutional. We think there is nothing in this that says the pay is changed. We feel there is a way we can even make that point clearer.

But I will be glad to furnish my friend with these opinions over the next few days, as we get them, in writing.

Mr. HARKIN. Will the Senator yield for a question?

Mr. STEVENS addressed chair.

Mrs. BOXER. I yield to the Senator from Iowa for a question.

The PRESIDING OFFICER. The Senator from California has the floor.

Mr. HARKIN. Will the Senator yield for a question?

Mrs. BOXER. I will be happy to do so, yes.

Mr. HARKIN. I will ask the Senator, since I am a cosponsor of this, am I of the understanding—this has passed before, has it not? At least twice before it passed in the Senate?

Mrs. BOXER. Actually a harsher version of this has passed twice.

Mr. HARKIN. And in both of those cases the President was not included, was he?

Mrs. BOXER. Yes. The President has been included because, when I put this out the first time, the other side made that point. The President said he wants to be included. As a matter of fact, he thinks that is the appropriate course. And we did put the President in because the other side said they would not take it unless the President was in it.

Mr. HARKIN. In other words, our friends on the Republican side said they would not take it unless the President was in it and now we are hearing the argument from the Republican side it is unacceptable because the President is in there, is that right?

Mrs. BOXER. Yes. It feels like a runaround, to me.

Mr. HARKIN. Article II of the Constitution says that the President's salary shall neither be increased nor diminished during the period for which he shall have been elected. But amendment 27 is much different. The 27th amendment, we all know why that was adopted, and the language shows that deals with pay raises. Is that not correct?

Mrs. BOXER. I believe that is correct.

Mr. HARKIN. That is worded differently than article II of the Constitution because it states in there that the pay of Senators and Representatives, the compensation, shall not be varied during that period of time.

Mrs. BOXER. That is correct.

Mr. HARKIN. So there is a difference between the wording of the 27th amendment and article II.

The Senator answered my questions.

Mrs. BOXER. I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, first of all, I want to commend my colleague from California for her excellent work and diligence in pursuing this important amendment.

For the life of me I cannot understand what this is really all about. Late last year and earlier this year a hue and cry went up that Members of the Senate and the House ought to be treated the same as other people in this country. OSHA laws and all of these other things ought to apply to us as well as everyone else so we would know what ordinary people went through. We all voted for that. So we covered the Congress with these laws. I think the people of this country thought that was wise.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HARKIN. Yes, I am delighted to yield.

Mr. BYRD. Just to correct the RECORD, there is one Senator who did not vote for that. That was the Senator from West Virginia.

Mr. HARKIN. I think the RECORD will show that I did not say it was unanimous.

Mr. BYRD. One Senator, no Member of the House voted against it. One Member of the Senate voted against it. I voted against it, and I do not regret my vote. I think time will prove me to have been at least partially right.

Mr. HARKIN. I appreciate that the Senator from West Virginia did not vote for it, but we may have a difference of opinion on this since I believe the Congress should have been covered by the same laws, just like I think this also should cover us the same way.

I find it more than passing strange that when the Government shuts down, as it recently did, that FBI agents, air traffic controllers, even our staff, all of our staff who work here, do not get paid. Most people thought that those who were not essential did not get paid, that the ones that went home did not get paid. I talked to a lot of my colleagues who did not know that those who were essential and went to work every day still did not get paid except for Senators and Members of the House.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. HARKIN. Yes, I am glad to yield for a question.

Mr. STEVENS. I assume the Senator knows it is because of a law passed by this Congress that put that into effect and that it was never exercised by any President before, but this President did exercise it. This President did, contrary to what President Carter did in 1977. He closed down the national parks. He closed down the various other essentials. But the concept was just to put pressure on Congress.

If you want to get into a political argument here, I thought that the understanding was that we would make a statement, and that if it came back I would raise a point of order. If the Senator wants to have this debate now and go into the evening, I am more than willing to get some documents in here and have the debate now. It was my understanding we would have it, if it came back from the conference.

Is what the Senator from Iowa saying is the Senator intends to say that the provisions I have raised do not cover this? I happen to be chairman of the Governmental Affairs Committee, and I share the Senator's feelings about putting people in the position where they are either told to go home or work and not get paid. But that is an act of Congress which I would like to get changed.

But I do not intend to get beat around the head because I want to raise a point of order based on the Constitution of the United States. Are we going to have this bill go to conference tonight or are we going to have this debate?

Mr. HARKIN. I do not know. I cannot answer the Senator's question. I know I want to speak on this. I went to some extent and length to get here to talk on this tonight. I intend to have my say on it. I have the floor, and I intend to speak on it. I do not know how long it is going to take me. It may take me just a little bit, but I am going to have my say on it because I feel very strongly about it.

Mr. President, once again the people of this country see Congress being treated differently than other people that work for the Federal Government. You know when you get laid off of a job and the plant closes down, you do not get paid. We have laws here that say when the Government closes down and we do not pass the appropriations bills, it is not a law. It is basically that we do not have any money to pay them.

So I really do not know what law the Senator was talking about. When we do not pass the appropriations bills—and that deadline occurs at the end of the fiscal year and we do not have any money to run the Government—for those appropriations bills that have not been passed, those agencies shut down unless we have a continuing resolution. When that runs out, then, of course, there is no money to pay it.

Well, there is a law that talks about essential personnel who have to show

up. For the life of me, I still do not understand how you can demand that someone come to work every day and still not pay them. I thought slavery went out of existence 130 some years ago in this country. I tell people this, and they are dumbfounded by it. I say, yes, the Federal Government can order people to come to work every day and not pay them. Imagine that: Order them to come to work and not pay them. But that is exactly what is happening. It is unfair.

Quite frankly, I think it is unconstitutional. I do not know if anyone has ever tested it, but I do not think that is constitutional. Certainly, I think it is a violation of civil rights to have someone come to work and say, ''However, you are not being paid for that period for which you work.''

So I think that we ought to cover Congress just as well as we cover other members of the Federal Government. We passed it two or three different times here. It always goes to conference, and then it gets lost. We know what kind of game that is. We passed it, and everyone says, ''Oh, yes, I voted to cover Congress just like everybody else, but something happened in that gray mist of the conference committee.''

Well, I think the Congressional Accountability Act that we passed is a good bill. I know the Senator from West Virginia did not think so. But I think the vast majority of Congress obviously did think so. I think it is time that we cover ourselves the same way as other Federal workers. If there is a shutdown in the Government, and the appropriations bills have not been passed and other Federal workers are not being paid, whether they come to work or not, then I do not think Senators and Congressmen ought to be paid for the same period of time either.

It is a basic issue of fairness and equity. You can cloak arguments in constitutionality. I do not want to violate the Constitution. But I think a clear reading of the 27th amendment and the reading of the history of the 27th amendment shows clearly that it was not intended to cover this. It was only intended to cover pay raises enacted by Congress.

The Senator from Alaska may have—indeed, I think probably does—a valid point regarding article II of the Constitution. But I do not believe it is a valid point when it comes to the 27th amendment which talks about Members of the Congress.

The continuing resolution I know did stipulate that all Federal workers could be paid in the next pay period.

So, again, we have this odd system where we had the Government shut down and no one gets paid. They are not paid, but they are paid later. A lot of people get time off but still are going to be paid.

We may be facing another shutdown of the Government on December 15. I do not know. I hope not. But we will be in a situation there again where Federal workers could be told to come to work every day and not get paid. When? During the height of the Christmas season when they have their bills to pay and, as I said, earlier, their mortgages to pay, their car payments to make, and Christmas presents to buy. And, yet, we are going to tell them, no, they do not get paid. But that is all right; Senators and Congressmen will get paid.

It is, Mr. President, a basic issue of fairness and equity. I congratulate the Senator from California for pursuing this, and I am proud to be a cosponsor of it. I join with her in saying that, if it does not make it on this bill, there will be another one and another one and another one, and we will keep attaching it until finally we get something that must pass.

This is an issue we should not let go of because it has to do, as I said, with basic fairness and equity. And we should not be treated any differently than any other Federal worker, I do not care where that Federal worker works, for what agency.

I yield the floor.

Mr. STEVENS. Mr. President, I am not going to prolong the debate. Clearly, it is the intersection of the Antideficiency Act and our having reached the debt ceiling as enacted by Congress and the failure to have appropriations bills all occur at the same time that led to an Executive order of the President instructing Cabinet officers not to have other than essential people work. It was an act of the President of the United States himself in signing that Executive order that brought about everything that the Senator from Iowa has just complained about.

Now, we would be more than happy in my committee to consider changing the law. I have said before I think it should be changed. And I do not see any reason why we should have a situation such as existed. We are not in a position where we are borrowing money to pay those people, but it was just done to put pressure on the Congress.

At this time, however, I am not going to raise this point of order, but I again put the Senate on notice if it comes back from conference we will have a debate on the constitutionality and we will let the Congress and the Senate in particular determine whether it wants to enact an unconstitutional law.

I take it without any question that the article II concept applies. Under the 27th amendment to the Constitution, if the Senator from Iowa wants to know how that would work, if we have such a collision on December 15, as we think we will have, and it extends beyond December 31, the compensation of every Senator in this body would be varied because he or she would not have been paid the compensation we are committed to pay him or her for the year of 1995, and this would be a denial of the compensation to a Member of Congress in violation of the 27th amendment.

There may be a way we could do it, and I do not have any problem about doing it right, but it is not to be done by an amendment just thrown out in the Chamber every time something comes up to try and make the proposition that this Senate under our majority control is somehow or other treating Federal employees different than we are treating ourselves.

That is not true. The laws that we are following were enacted before. The President of the United States followed those laws and signed an Executive order, and that is why people stayed home when they were told not to report to work and we are paying them, as we should, under the laws. But they are not covered by the Constitution as is the President of the United States and Members of Congress.

I would be perfectly willing to continue the debate. I personally would like to vote on the amendment by voice vote, and we will discuss it later. But if the Senate wants to get into it, I will get a few tomes over here and we will get into chapter and verse of why this is unconstitutional legislation.

Mrs. BOXER. Mr. President, I am not going to devote chapter and verse, and I look forward to working with my friend from Alaska to make this right if he feels it can be improved. I just want to point one thing out. This is not something that was just put together. This particular amendment is something I have been working on with my colleagues for a long time because I saw this train wreck coming.

A lot of people said, oh, it will never happen; everything will go smoothly. And I said, well, I am concerned because I had heard certain statements made, particularly in the other body, where I felt we were going to have a train wreck, and at that very moment when I had that sense I realized I wanted to make sure Members of Congress were treated the same way as other Federal employees.

So I just want to say this is not sloppy work, I do not believe, on the part of Members of this body, including the Senator from Maine [Ms. SNOWE], who actually really helped to write this. But I will work to make sure that every time we offer this up, because clearly we are going to have to do it again, we improve it in terms of clarity as far as its constitutionality.

I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I just want the RECORD to be clear in response to my friend from Alaska. I do not think the RECORD will show I was saying it is because the Republicans are now in the majority. That is not the problem at all. I never said that and the RECORD will show I never said that. Basically, I have said all along this is an issue of basic fairness and equity, and it goes to the heart of whether or not we consider

ourselves some sort of different class of people in this country above everything else, where we can continue to get paid while other Federal workers do not during a period of time when the Government is shut down. People in this country understand that. I do not care who is in the majority, whether Democrats or Republicans. It is not fair and it ought not to be done that way. That is my basic point and I will continue to make that point.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3065) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. GORTON). The Chair asks that the RECORD show he opposes the Boxer amendment.

Are there further amendments to the bill?

Mr. PRESSLER. Mr. President, I ask unanimous consent that Senator GRASSLEY be added as a cosponsor to S. 1396.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, the managers' amendment accepted earlier today to the Interstate Commerce Commission Sunset Act of 1995 will greatly assist Vermont in maintaining its intercity passenger rail service. I want to thank the managers of the bill for working with me on this important amendment.

Almost 1 year ago, residents of Vermont were informed that they would lose their passenger rail service. In an effort to cut costs and revitalize our struggling national passenger rail corporation, Amtrak announced a major restructuring. This effort included cutbacks in service, downsized management, streamlined operations, and retirement of older equipment. This plan also called for elimination of certain routes, including the Montrealer, which had served Vermont for many years.

Ending Vermont's connection to our national passenger rail system would certainly have hurt our small State. An integral component of our transportation infrastructure, Amtrak brought skiers, business people, and leaf peepers to our beautiful State. In addition, Amtrak allows residents of Vermont to travel economically to nearby destinations and across the country.

In an effort to save this service, I worked with Senator LEAHY, Governor Dean, the Vermont State Legislature, and many dedicated Vermont citizens to develop a plan to continue passenger rail in Vermont. Amtrak became an active partner in assisting with this goal, and early last spring the new Vermonter began service from Washington, DC to Burlington, VT.

The Vermonter has become a model for how Amtrak and States can work together to preserve passenger rail service. Monthly ridership on the Vermonter has increased over 60 percent since April. The train allows residents of New York City to reach the ski slopes of Vermont in a few hours. A baggage car was added to the train, with state-of-the-art ski and bike racks designed by Vermont crafts people and Vermont-made food products are served in the dining car. Vermonter's are proud of this train and we will do all we can to see it survive for the long term.

The plan establishing the Vermonter required the State of Vermont to pay any costs over and above the revenue generated by the train. For 1995, the State agreed to pay $750,000 to support the train. Like all States, Vermont responsibly maintains a balanced budget. This task is becoming more and more difficult, as there are increasing demands on the State to provide services.

To assist States such as Vermont, Senator ROTH offered an amendment to the National Highway System Designation Act, NHS, which would have granted States the flexibility to use highway funds to support Amtrak service. This effort had the strong backing of many State legislatures and the National Governors Association. When brought to a vote in June, the amendment passed by an overwhelming margin here in the Senate, giving States hope for preserving their passenger rail service. However, during conference negotiations on the NHS bill, Senate leaders were forced by the House to drop this important provision.

My amendment will allow Vermont to use unobligated highway funds to pay its portion of the Vermonter's operating costs. In fiscal year 1996, Vermont will obtain over $71 million under the Federal-aid highway program. This funding comes from the highway trust fund, paid for by motor fuel taxes. Vermonter's pay into the trust fund each time they fill their cars with gasoline. I believe these same Vermonters would strongly support using this funding to maintain our passenger rail service.

All States should be granted this flexibility, and the success in utilizing this flexibility in Vermont should prove to skeptics the value of giving all States the authority to spend their Federal transportation dollars to support passenger rail.

Mr. President, I hope in the future we are successful in providing this flexibility to all States. But for now, without the authority provided by my amendment, Vermont may risk losing the Vermonter. This would be a tragedy.

I thank my colleagues for considering this provision, and I appreciate their support.

Mr. DOLE. Mr. President, throughout this Congress, a great deal of discussion has been devoted to a review of existing agencies and functions. The budget resolution and the Department of Transportation appropriations bill called for the elimination of the Interstate Commerce Commission. S. 1396 sunsets the Interstate Commerce Commission and the Federal Maritime Commission and creates a new intermodal board within the Department of Transportation. I believe S. 1396 has taken the right steps to provide for reform while retaining a competitive atmosphere for railroad, motor carrier, and shipping industries.

I have been a strong proponent over the years for rail reform that provides an atmosphere for a strong rail industry as well as retaining a competitive balance for small shippers. I am particularly concerned about the impact of changes upon small shippers, including the small grain handlers, shippers and processors of Kansas and the Midwest.

The legislation before us retains important provisions that have been provided in the past to small shippers while reducing unnecessary regulatory requirements. I believe S. 1396 more adequately addresses the concern of small shippers by providing common carrier obligations, protections on agriculture contracting authority, notice procedures for rate increases, and abandonment procedures. In addition, protections are provided for individuals who lose their jobs due to mergers or acquisitions. For these reasons, S. 1396 has gained bipartisan support and deserves passage.

The railroad industry is going through some interesting times. The Burlington Northern/Santa Fe merger coupled with the proposed Union Pacific/Southern Pacific merger has created concern about the impact of these mergers on shippers. Shippers face unique challenges as railroads merge, creating less options and uncertain futures. Under these circumstances, it becomes increasingly important to ensure an atmosphere where economically viable competition is allowed to exist. The mergers being proposed are of great concern for several States, including Kansas. I believe these mergers can accomplish a strong base for the various industries and small businesses they serve, however, the impacts of the merger must be closely monitored. The reduction in the overall number of railroads should not mean a reduction in services to those who depend on these services the most.

I would like to thank Senator PRESSLER and Senator EXON for their efforts on this legislation and urge your support.

Ms. SNOWE. Mr. President, I rise in support of the Interstate Commerce Commission Sunset Act, and I would like to thank the chairman, the Senator from South Dakota [Mr. PRESSLER], for his interest in, and assistance, in putting language in the bill that addresses the serious problem of trucker fatigue.

The bill would place the Federal Highway Administration [FHWA] on a time line for publishing regulations related to trucker fatigue. The purpose of

this language is to move the decisionmaking process forward.

What this language in section 216 will do is require FHWA to issue an advanced notice of proposed rulemaking [ANPR] dealing with fatigue-related issues such as 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, and rest and recovery cycles no later than March 1, 1996. This would be followed by a notice of proposed rulemaking [NPR] within 1 year and a final rulemaking within 2 years.

It is estimated, Mr. President, that truck driver fatigue may be a contributing factor in as many as 30 to 40 percent of all heavy truck accidents.

FHWA has been looking at the issue of trucker fatigue since the 1970's. I believe it is time we moved from studying the issue to making decisions about what is to be done to reduce the number of accidents related to fatigue. I know that regulations alone will not stop these tragic accidents, we need increased education, we need increased awareness and better enforcement as well. But we can set an example and start making changes in laws and regulations—some of them adopted 60 years ago—to improve safety on our highways.

The Office of Motor Carrier Safety currently has six studies underway on tired truckers. Three of them will be completed this year: Fitness for Duty Testing, Multiple Trailer Combination Vehicle Driver Fatigue, and Stress and Rest Areas, and one, Driver Fatigue and Alertness Study will be completed next spring. And I would like to thank the chairman again for arranging a series of staff briefings on these studies, at my request. I believe it is important that this committee stay abreast of the work being done in this area so that we may better formulate legislative responses, where necessary.

In addition, the National Transportation Safety Board [NTSB] released a study in January, 1995 on trucker fatigue that called on FHWA to complete rulemaking within 2 years on issues related to trucker fatigue, so the bill's language is in keeping with NTSB's recommendation.

By establishing a time line for FHWA, we are requiring that the decisionmaking process begin on this important issue. There is a lot more to be done in this area, but the beginning of the rulemaking process is a big step in the right direction.

Mr. PRESSLER. Mr. President, I urge any Senators who have any final amendments to come to the floor. I understand one Senator may offer an amendment, at which time I hope we can pass this bill by unanimous consent. I think we are prepared on this side of the aisle to pass this bill. But as I understand it, Senator ASHCROFT may have an amendment.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3067

Mr. ASHCROFT. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. ASHCROFT] proposes an amendment numbered 3067.

Mr. ASHCROFT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 413, after line 14, insert the following new subsection:

''(d) The remedies provided in this part, concerning matters covered by this part with respect to the transportation of household goods by motor carriers are exclusive and preempt the remedies provided under Federal or State law.''

Mr. ASHCROFT. Mr. President, I offer this amendment to provide for a fair and uniform way of compensating individuals, shippers of household goods for damage to those goods and to ensure that there is a fair and uniform way of making sure that those damages can be received by shippers of household goods.

Interstate commerce involves the transmission of goods from one jurisdiction to another. Something shipped in California may well cross numerous States on its way to Connecticut. It is important that we do not have the responsibility for those who ship goods to try and prove where damage happened to the goods if there are damages to the goods. It is important that we do not have to try and impose on those who are the carriers of the goods some ability to defend about whether or not there was negligence.

There is in this amendment, and the meaning of this amendment, a requirement that if goods are damaged, that no person whose goods have been damaged has to prove that the damages were caused by the negligence of the carrier or, otherwise, by the improper activities of the carrier. There is an automatic right of the person who ships the goods to recover the value of the goods, and that would be uniform.

Absent that uniformity, there are other things which might exist. For instance, normally, in order to recover against someone who has damaged something, you have to prove negligence. And I do not think that people who ship goods are in a position to prove negligence. They were not in possession of the goods. They usually were not with the goods. They were not in the area where the goods were damaged. They would have a hard time proving that.

So, this measure would provide that you do not have to prove negligence, that if you deliver the goods to the shipper, the household goods were being shipped across the country, and they were damaged, that you could automatically recover the value of the goods without proving negligence, without having to show that there was a particular substandard way of dealing with the goods on the part of the carrier involved.

In return for the concession that the shipper of the goods, the person who sends the goods, does not have to prove negligence, the damages are limited to the value of the goods. You cannot recover emotional harm or pain and suffering because of the anguish of learning that your Aunt Millie's vase was crushed in the shipment. You can only get the value of the vase.

So, the carrier is protected from having to pay some very subjective damages, but the person who ships the goods is guaranteed that if the goods are damaged, that those goods can be replaced because of the strict liability on the part of the carrier. This is a good system. It is a system which has long worked. It ought to be enshrined in this statute.

Now, the alternative is to have States create different laws about what kinds of recovery could be made by individuals whose goods were damaged. You have the potential of someone who ships something from California to Connecticut trying to prove that their goods were damaged in the most generous State or that their goods otherwise were valuable so that if that State allowed for pain and suffering or emotional distress, that those kinds of damages ought to be considered.

In my judgment, such damages ought not to be considered because they provide an incentive for forum shopping, people trying to make sure and prove that goods were damaged in one State as opposed to another. They subject shippers to unreasonable requirements to try and prove where the damage happened or where it did not happen. And we would be well-served in regulating interstate commerce to say that the person shipping the goods does not have to prove negligence, but the person who is carrying the goods is not responsible for a level of damages which is above and beyond the value of the goods, which would include emotional distress or other kinds of subjective things which are very difficult to prove and the amount of which could go into very high levels of expenditure above and beyond the value of the goods.

It is with that in mind that I have proposed the amendment, and I believe the amendment would be something that should be included in this measure.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, we have on this side not seen the amendment before it was proposed tonight. As I understand it, there may be some on our side, particularly on the Commerce

Committee, that would object to the Senator's amendment. I am put in the position of trying to secure some advice and counsel now from at least the ranking member of the Commerce Committee. So, we will be delayed for some time because he is in a conference, and we will have to try to reach him and see what we can do.

So, Mr. President, I have no alternative but to suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT 3063, AS MODIFIED

(Purpose: To modify the manager's amendment)

Mr. PRESSLER. Mr. President, I send an amendment to the desk to modify the manager's amendment. This amendment just changes one word, and it has been agreed to by both sides of the aisle.

I send the amendment to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The amendment is so modified.

The amendment, as modified, is as follows:

On page 3 of the amendment, between lines 14 and 15, insert the following: ''On page 311, line 16, insert 'reasonable' after 'a'.''.

Mr. PRESSLER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

GOOD NEWS FOR ALASKANS

Mr. STEVENS. Mr. President, I come to the floor today to say this is a good day for my State of Alaska. This afternoon President Clinton signed legislation which lifts the ban on the export of Alaskan North Slope crude oil and authorizes the sale of the Alaska Power Administration.

Alaskans have been fighting for both of these provisions for more than 20 years. The ban on the export of our own oil was unjust and unconstitutional, as I have said here on the floor many times. Before today, Alaska was the only State prohibited from exporting its most valuable product. There is no ban on the sale of oil from Texas or the exporting of apples from Washington State. I see the distinguished occupant of the chair is from my southern neighboring State.

Today's action by the President lifts years of discrimination against Alaska, and I think it proves that perseverance can overcome bad policy. Lifting this ban will promote domestic oil production, provide jobs, and make Alaska less dependent on foreign oil. The ban has had the unintended effect of actually threatening our energy security by discouraging further energy production in the south 48 and creating unfair hardships for a struggling oil industry in the United States.

Fundamentally, the existing export restriction distorts the crude oil markets in Alaska and on the west coast. The inability to export Alaskan North Slope crude oil depresses the open market price of Alaska North Slope crude on the west coast, which is essentially the only market for our oil. Some people will tell us that it makes no sense to lift the export ban while Congress is pursuing an effort to authorize oil exploration on Alaska's arctic coastal plain. And nothing could be further from the truth.

Lifting the export ban simply restores a true market price for Alaskan oil, and the west coast will still be the principle consumer of that product. What this new law does is allow an Alaskan product to be sold at a fair price, the same demand farmers in the Midwest make when they sell their crops or automakers in Detroit make when they sell their products.

The Department of Energy noted in a 1994 study of the export ban that the result of the export ban means ''that the west coast generates the largest gross refiner margins in the world.''

So what does this new law do? It puts fairness back into the economic system and removes an ugly vestige of protectionism.

One of the main reasons I have come to the floor is to congratulate the chairman of the Energy Committee, my colleague and good friend, Senator FRANK MURKOWSKI. I also congratulate Congressman DON YOUNG, chairman of the House Resources Committee. My two colleagues made great efforts to shepherd this bill through the legislative process.

Actually, Mr. President, I think the President signed the bill principally to help California because most of the jobs to be restored will be in California. And I do thank him and Energy Secretary O'Leary for their support of this bill.

The Department of Energy did issue a comprehensive report last year that proved once and for all that the ban on exporting Alaskan oil made no sense. Lifting that ban will create 25,000 jobs nationally, most of them in California, as I said, and could return substantial funds to the Nation and to the States of California and Alaska.

The sale of the Alaska Power Administration is another item, an item that I have worked on for more than two decades. During the Nixon administration, I introduced in the Senate the first bill to authorize the sale of this entity.

Today's actions restore some of the promise that was made when we obtained statehood for Alaskans. We always sought to be a full partner with other States. For too long, Alaska has been treated as a second-class citizen, and I think the export ban was one example. The refusal to pass the law to sell the Alaska Power Administration, as was requested by our citizens 20 years ago, is also an example of just holding up something that was good for Alaska because one Senator in the Congress opposed it.

I do believe that in a State where the Federal Government controls more than 70 percent of the land that we should have been able to export our oil as a marketable product. There would have been a great deal more demand for Alaska's oil exploration in the last period particularly since the discovery of oil on the North Slope. I think it was unfortunate that that was one of the provisions we had to agree to to obtain approval by Congress of the bill that gave us authority to grant the right-of-way for the Trans-Alaska Pipeline.

In my judgment, this has been a long time coming. There is still a long line of actions, Mr. President. The Alaskans have requested us to give them full rights of statehood, and I intend to come to the Senate and ask for those rights as the time goes by.

Thank you very much, Mr. President. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from South Dakota is recognized.

OPPOSED TO SENDING TROOPS

Mr. PRESSLER. Mr. President, I am opposed to sending troops to Bosnia based on the information I now have. I base that judgment, in part, on my own experience as a lieutenant in the Army in Vietnam many years ago. It has been my observation that our soldiers have a very hard time in a civil-war situation in another country, and that is because our soldiers are frequently used essentially as shields. We value human life so highly that we react very strongly to any body bags coming back or to any casualties, as we should.

There is probably no other country in the world that reacts to its soldiers being killed or captured as we do in the United States, and again, Mr. President, we should act that way. Any action by our soldiers will be shown on television in living color. If there are any funerals, they will be a nationwide event. U.S. soldiers become shields and hostages and symbols very quickly.

If we had a vital interest that we could accomplish there, I would be for

it. Unfortunately, it is my strong feeling that the various civil wars in Yugoslavia since the 15th century have been augmented by virtue of having foreign troops come into what is now Yugoslavia and enter into the civil war.

The current civil war there has been extended because foreign troops have come. Let us analogously consider our Civil War in the United States. There were not foreign troops involved, and it was settled. It was a bloody, gruesome war, but it was settled. Let us just imagine foreign troops had come to our Civil War. We probably would still be fighting it today.

What is happening in Yugoslavia is that they are on the border between East and West, between the Moslem world and Christian world, between all the empires of the East and West. Every time they have a civil war, foreign troops come and get involved, and we are part of that pattern. We are doing the same thing.

I do not believe our troops are going to be able to solve the problem there. I think they are going to be shields and hostages. I think, as occurred in Haiti, our best intentions will not result in our intended consequences. We are receiving reports that in Haiti, all the money our taxpayers spent, plus the presence of the U.S. troops, have been for nought, because now President Aristide is indicating he wants to stay on, or at least that has been the indication. There is rioting in the streets, and it does not seem we accomplished the objectives the taxpayers were asked to pursue.

So I know our President is acting in the best faith, but based on my personal experiences as a soldier in Vietnam, I believe this is a mistake. Some people have said to me, ''Are you willing to support the President?'' Of course, I want to support the President, but I have a great deal of difficulty because of my personal experiences. I served two tours of duty in Vietnam as a lieutenant and based on that experience, I am opposed to our troops going into Bosnia.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERSTATE COMMERCE COMMISSION SUNSET ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3067 WITHDRAWN

Mr. ASHCROFT. Mr. President, I have conferred with individuals whose interest in the amendment which I had proposed has been expressed, and they have been very cordial in their willingness to work to try and accommodate the objectives which I have expressed in filing the amendment, and because we have an opportunity to work toward those objectives together—and I would hope that we can do so effectively—I at this time withdraw my amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment. The amendment is withdrawn.

Mr. HOLLINGS. Mr. President, the distinguished Senator from Missouri does have a real problem, and some of that language looked as if he had a good solution but in some instances could have gone too far. The truth of the matter is I am not positive about it, but I am delighted to work with the distinguished Senator and I hope we can get that problem solved for him. I appreciate it.

Mr. EXON. Mr. President, now that we are about where we were at 3 o'clock this afternoon, maybe we will be successful at this time. I think we are ready to pass this bill if the Chair would see fit to recognize the Senator from South Dakota.

Mr. PRESSLER. Mr. President, I commend my colleague from Missouri for his leadership, and we look forward to him revisiting this issue again.

At this time, I ask that the bill be read the third time.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 2539, the House companion, and that the Senate immediately proceed to its consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 2539) to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. PRESSLER. Mr. President, I ask further that all after the enacting clause be stricken and the text of S. 1396, as amended, be inserted in lieu thereof and that H.R. 2539 be read a third time, and the Senate then immediately vote on passage of H.R. 2539.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. We have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 2539), as amended, was passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

Mr. EXON. I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PRESSLER. I finally ask unanimous consent that S. 1396 be placed back on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Finally, Mr. President, I want to take just a moment to thank some of the staff and individuals who worked so hard to make this legislation possible. They have been working for many months and deserve our thanks. First, let me thank Chris McLean of Senator EXON's staff and Clyde Hart and Carl Bentzel of the committee's minority staff. On the committee's majority staff, I want to thank Tom Hohenthaner and Mike King for their hard work in bringing us to this point. Each of these staff members demonstrated the kind of bipartisan initiative that epitomized the process and the professionalism that made the legislation possible. Finally, I wish to give the highest praise to Ann Begeman for her diligent work on this bill. She displayed great persistence and leadership and I want to especially recognize her efforts.

Let me also thank Linda Morgan, chairman of the ICC, for all her guidance and expertise. Her efforts are much appreciated. I also want to thank a staff member of the ICC, Ellen Hansen, who was generously detailed to the committee by the agency and who has worked very hard, and provided the technical expertise necessary to produce legislation that provides a reasonable and orderly transition. I very much appreciate the professional work done by all these dedicated individuals.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. PRESSLER. Mr. President, I ask unanimous consent that there now be a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a notice of proposed rulemaking was submitted by the Office of Compliance, U.S. Congress. This notice proposes rulemaking on the following statutes made applicable by the Congressional Accountability Act: the Fair Labor Standards Act, Family Medical Leave Act, Worker Adjustment and Retraining Notification Act, and Employee Polygraph Protection Act.

Section 304 requires this notice to be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD; as follows:

FAIR LABOR STANDARDS ACT

PROPOSED REGULATIONS RELATING TO THE SENATE AND ITS EMPLOYING OFFICES

OFFICE OF COMPLIANCE

The Congressional Accountability Act of 1995: Extension of Rights and Protections Under the Fair Labor Standards Act of 1938 (Notices of Proposed Rulemaking with respect to Interns and Irregular Work Schedules were issued on October 11. The comment period closed on November 13. Final rules will be issued separately pursuant to Section 304 of the CAA.)

Notice of proposed rulemaking

Summary: The Board of Directors of the Office of Compliance is publishing proposed rules to implement section 203(c) of the Congressional Accountability Act of 1995 (P.L. 104–1, Stat. 10) (''CAA''). The proposed regulations, which are to be applied to the Senate and employees of the Senate, set forth the recommendations of the Executive Director for the Senate, Office of Compliance, as approved by the Board of Directors, Office of Compliance.

Dates: Comments are due within 30 days after publication of this Notice in the CONGRESSIONAL RECORD.

Addresses: Submit written comments to the Chair of the Board of Directors, Office of Compliance, Room LA 200, Library of Congress, Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 252–3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Deputy Executive Director for the Senate, Office of Compliance at (202) 252–3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this Notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, (202) 224–2705.

Supplementary information:

I. Background

A. Introduction

The Congressional Accountability Act of 1995 (''CAA''), PL 104–1, was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 203(a) of the CAA applies the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1) and (d), 207, 212(c) (''FLSA'') to covered employees and employing offices. Section 203(c) of the CAA (2 U.S.C. Section 1313(c)) directs the Board of Directors of the Office of Compliance established under the CAA to issue regulations to implement the section. Section 203(c)(2) (2 U.S.C. Section 1313(c)(2)) further states that such regulations, with the exception of certain irregular work schedule regulations to be issued under section 203(a)(3), ''shall be the same as substantive regulations issued by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

B. Advance notice of proposed rulemaking

On September 28, 1995, the Board of the Office of Compliance issued an Advance Notice of Proposed Rulemaking (''ANPRM'') soliciting comments from interested parties in order to obtain participation and information early in the rulemaking process. 141 Cong. R. S14542 (daily ed., Sept. 28, 1995). In addition to inviting comment on specific questions arising under five of the statutes made applicable by the CAA in the ANPRM, the Board and the statutory appointees of the Office sought consultation with the Chair of the Administrative Conference of the United States, the Secretary of Labor and the Director of the Office of Personnel Management with regard to the development of these regulations in accordance with section 304(g) of the CAA. The Office has also consulted with interested parties to further its understanding of the need for and content of appropriate regulations. Based on the information gleaned from these consultations and the comments on the ANPRM, the Board of Directors of the Office of Compliance is publishing these proposed rules, pursuant to Section 203(c)(1) of the CAA (2 U.S.C. Section 1313(c)(1)).

1. Modification of the regulations of the Department of Labor

In the ANPRM, the Board asked the question, ''Whether and to what extent should the Board modify the Secretary's Regulations?'' The Board received 15 comments on the ANPRM: two from Senators, four from House Members (one from the leadership of the Committee with primary jurisdiction for the CAA and one from three of the sponsors of the CAA), one from the Secretary of the Senate and three from House offices (two from institutional offices and one from a Member's Chief of Staff), four from business coalitions or associations representing an array of private employers, and one from a labor organization.

Those commenters who expressed views on the ANPRM cited both the statute and the legislative history in taking the position that the CAA presumes that the regulations of the Department of Labor should not be modified. Illustrative comments included the following:

''[Section 304 of the CAA] evidences clear legislative intent that the Board apply these rights and protections to Congressional employees in a manner comparable to and consistent with the rights and protections applicable to employees in the private sector under regulations adopted by the Secretary (DOL). . . . The [CAA] requires that the regulations issued by the Board be the same as those issued by DOL unless the Board determines that modification would more effectively implement the rights and protections of the laws made applicable under the [CAA].''

''[I]f a law is right for the private sector, it is right for Congress; . . . Consistent with [this] principle, we would urge the Office not to deviate (except in those few areas where expressly authorized by the CAA) from applying the laws in the same manner in which they are applied to the private sector.

* * * * *

[W]e have not identified any situations in which modifications [of the DOL regulations] would be appropriate.''

''There are no circumstances that justify 'good cause' for adopting regulations that deviate from those currently applied to private sector employers.''

''[Section 203(c)(2)] confers on the Office of Compliance only very limited authority to deviate from the present DOL regulations. The legislative history to the 'good cause' exception likewise makes clear that this authority is to be use by the Office of Compliance sparingly.''

* * * * *

''The legislative history of the CAA demands that the Office of Compliance apply to Congress the same regulations as those imposed on the private sector.''

''[W]e urge the Board to refrain from modifying regulations promulgated by the Department of Labor and other Executive agencies. Use of established regulations will provide the Board, employees and employing offices with a body of instructive case law and interpretive documents.''

''While the Office serves an important implementation and enforcement role, it must not place itself in the position of shielding Congress from substantive requirements imposed on private businesses.''

Based on the comments and the Board's understanding of the law and the institutions to which it is being made applicable, the Board is issuing the Secretary's regulations with only these limited modifications: Technical changes in the nomenclature and deletion of those sections clearly inapplicable to the legislative branch.

2. Notice posting and recordkeeping

The ANPRM also invited comment on whether the recordkeeping and notice posting requirements of the various laws made applicable by the CAA are incorporated as statutory requirements of the CAA. The ANPRM inquired whether, if such requirements were not incorporated, could and should the Board develop its own requirements pursuant to its ''good cause'' authority. The ANPRM also invited comment on proposing guidelines and models for recordkeeping and notice posting.

Commenters were in agreement that recordkeeping and notice posting are important to the effective implementation of several of the statutes incorporated in the CAA. However, opinions as to whether the Board should require notice posting and recordkeeping were widely divergent. Several commenters expressed the view that the Board lacks the statutory authority to adopt notice posting and recordkeeping requirements

and that the notice posting and recordkeeping requirements of the FLSA do not apply to Congress. Other commenters expressed the view that the Board has the authority to issue regulations to impose recordkeeping and notice posting requirements and that such regulations should be, in substance, the same as those with which the private sector must comply.

The Board agrees with those commenters who took the position that, if employing offices are to be treated the same as private sector employers are treated under FLSA, they should have to comply with the statute's notice posting and recordkeeping requirements. Moreover, the Board notes that notice posting and recordkeeping promote the full and effective enforcement of these incorporated rights and protections. In the Board's view, notice posting and recordkeeping may well be in employers' interests both as a sound personnel practice and in order to defend against subsequent litigation.

But while the CAA incorporates certain specific sections of the FLSA, the CAA explicitly did not incorporate the notice posting and recordkeeping requirements of Section 11, 29 U.S.C. §211 of the FLSA. Because the Board's authority to modify the Secretary's regulations for ''good cause'' does not authorize it to adopt regulatory requirements that are the equivalent of statutory requirements that Congress has omitted from the CAA, the Board has determined that it may not impose such requirements on employing offices. However, as various commenters suggest, the Board will provide guidance to employing offices concerning model recordkeeping practices as part of carrying out its program of education under section 301(h) of the CAA (2 U.S.C. 1381(h)).

The Board would also note that based upon their collective years of experience representing employers and employees with regard to various labor and employment laws, including the FLSA, the absence of recordkeeping and notice posting requirements may create a void which can only partially be filled by the program of education to be carried out by the Board pursuant to Section 301(h)(1) and the optional notice which will be distributed by the Board pursuant to Section 301(h)(2). The Board also would emphasize that employees will in many circumstances be able to establish a prima facie case simply by their own testimony estimating the hours worked by the employees where the employing office has failed to maintain adequate, accurate records. An employing office may find that its ability to respond to an employee's prima facie case is substantially burdened by its failure to keep accurate payroll and time-records. If Congress wishes to experience the same burdens as faced by the private sector and also to address these issues, it should enact recordkeeping requirements comparable to those of the FLSA. (Of course, like the regulations under those statutes, such recordkeeping requirements may leave to the discretion of each employing office the precise form and manner in which records will be kept.) But, in light of the text and structure of the CAA, the Board believes that it is up to Congress to decide whether to do so.

II. The proposed regulations

A. Background

Congress committed enforcement of the Fair Labor Standards Act of 1938 to the Department of Labor and its Wage and Hour Division, whose regulations and interpretations of that Act comprise almost one thousand pages of Chapter V, Title 29 of the Code of Federal Regulations. In enacting the CAA, however, Congress expressly refused to commit enforcement to the executive branch of the Federal government nor did Congress bring its employing offices under the FLSA itself. Instead, Congress carefully specified, through sectional references to the FLSA, the substantive rights and protections afforded to legislative employees, and precisely mandated procedures by which those rights and protections would be largely enforced by a new and independent office in the legislative branch, the Office of Compliance. Further, in granting the Board rulemaking authority with respect to the FLSA in Section 203(c)(1) of the CAA, Congress affirmatively commanded the Board to issue substantive regulations, with the important directive that they ''shall be the same as substantive regulations promulgated by the Secretary of Labor * * * except as the Board may determine, for good cause shown * * * that a modification of such regulations would be more effective for the implementation of rights and protections under'' the CAA.

In the Board's view, and notwithstanding what has been urged by some of the commenters, this unusual statutory framework neither mandates nor allows an uncritical, wholesale incorporation of all the regulations and interpretive statements issued by the Labor Department under the FLSA. Rather, this statutory framework requires the Board to cull from the vast body of FLSA material found in the Code of Regulations only those items that constitute ''substantive regulations'' as the term is understood under settled principles of administrative law. (See *Batterton* v. *Francis,* 422 U.S. 416, 425, n. 9 (1977)). Moreover, the statutory framework authorizes the Board to delete those substantive regulations that either have no application in the employing offices of the Congress or that are not likely to be invoked. For these reasons, the Board is not proposing their adoption, unless public comments establish a justification to the contrary. Finally, by limiting itself to substantive regulations, the Board is not adopting those portions of 29 C.F.R. chapter V that constitute the interpretative bulletins or statements of the Department of Labor and its Wage and Hour Division.

B. Proposed regulations

1. General provisions

The proposed regulations include an initial Part 501 which contains matters of general applicability including the purpose and scope of the regulations, definitions, coverage, and the administrative authority of the Board and the Office of Compliance. In addition, a section explains the effect of interpretative bulletins and statements of the Department of Labor, and another section provides for the application of the Portal to Portal Act. These latter sections are discussed below.

It is noted that the definition section incorporates the general provisions of section 101 of the CAA which defines ''employee,'' ''covered employee,'' ''employing office,'' and ''employee of the House of Representatives.'' Section 203 of the CAA, which applies the rights and protections of the FLSA, also contemplates the promulgation of a definitional regulation that excludes ''interns'' from the meaning of ''covered employee.'' The Board in a separate NPRM issued on October 11, 1995, proposed such a regulation, together with a regulation governing irregular work schedules and the receipt of compensatory time in lieu of overtime compensation. The Board is reviewing the public comments received in response to that NPRM and will issue a separate final rule on those issues.

It should be noted that section 225(f)(1) of the CAA provides that, except where inconsistent with definitions of the CAA itself, the definitions in the laws made applicable by the CAA shall also apply under the CAA. Thus, attention must be paid to those definitions found in the FLSA that are consistent with the CAA even if they are not expressly incorporated in the proposed regulations. In this regard, one commenter expressed concern over whether employing offices would be obligated to pay minimum wages and overtime compensation to individuals who do volunteer work, in light of the fact that under the FLSA ''employee'' may include certain volunteers. See 29 U.S.C. §203(e)(4)(A), which excludes from the definition of ''employee'' only certain volunteers who perform work for a State, political subdivision, or interstate governmental agency. Similarly, it is noted that, in enacting the CAA, Congress did make separate provision for excluding interns. Thus, the Board has concluded that, to the extent that volunteer activity would bring an individual under the coverage of the FLSA, similarly situated individuals would be treated in the same manner under the CAA.

2. Provisions derived from regulations of the Department of Labor

Those regulations of the Department of Labor that are being adopted in substance include:

Part 531, which governs the manner in which an employee's wages are calculated taking into account the reasonable cost to an employer of furnishing board, lodging, or other facilities. This Part is derived from Section 3(m) of the FLSA, which directs how the ''wage'' paid to an employee is determined. Section 3(m) must be treated as applicable under the CAA by virtue of Section 225(f)(1), which authorizes generally the inclusion of those definitions and exemptions that are consistent with definitions and exemptions of the CAA. However, it is noted that section 3(m) is inconsistent with the CAA insofar as the implementing regulations in Part 531, Title 29, C.F.R., provide procedures by which the Wage and Hour Administrator makes determinations in specific cases with respect to the furnishing of board, lodging, or other facilities. Because the Administrator has no role in the enforcement of the CAA by reason of Section 225(f)(3), and because the Board is not at this time is not authorizing the Office of Compliance to make such specific determinations, the Board proposes to delete the provisions setting forth those procedures. Similarly, the reference to ''tipped employees'' and the method by which their wages are determined are deleted because the applicable sections assign responsibility to the Administrator.

Part 541, which defines and delimits the bona fide executive, administrative, and professional employees who are exempt under Section 13(a) of the FLSA from the minimum wage and maximum hours requirements. The Board has determined that this exemption, commonly known as the ''white collar'' exemption, is applicable to employing offices of Congress by virtue of Section 225(f)(1) of the CAA.

In the ANPRM, the Board solicited public comment on whether and to what extent it should modify the Labor Department's regulations regarding this exemption. Generally, the commenters did not question the applicability of this exemption to covered employees under the CAA, and several commenters urged the adoption of all of the Department's regulations in Part 541, 29 C.F.R., including the interpretative bulletins, without any modification. Two commenters contended that the Board's regulations should grant a sweeping exemption for nearly all staff employees working in elected members' offices because they exercise independent judgment and discretion in performing their responsibilities.

Other commenters urged the Board to modify the Labor Department regulations to take into account the unique job responsibilities of staff working for an elected member either in a personal office, in a leadership office or on committee. Recognizing that job titles alone cannot be dispositive of who is an exempt employee, these commenters urged the Board to identify with particularity those job duties which, if performed by an employee, would render him or her an exempt executive, administrative, or professional employee.

The Board is proposing to adopt the Labor Department's substantive regulations contained in Subpart A of Part 541 of 29 C.F.R. that set forth the fundamental criteria for satisfying each of the three exemptions. But, for the reasons explained below, the Board is not formally adopting the interpretative bulletins contained in Subpart B of Part 541 of 29 C.F.R., which discuss and illustrate through examples the Department's understanding of the exemption criteria.

With respect to some commenters' request that the Board modify the white collar exemptions, upon reflection, the Board has reluctantly concluded that such a modification would not satisfy the ''good cause'' requirement of Section 203(c)(2) of the CAA. The Board recognizes that the Secretary's regulations and interpretations were promulgated in a different era, with different employment paradigms in mind. Thus, the Board appreciates the many difficulties that employing offices will have in interpreting and reconciling these regulations to present day realities. Moreover, the Board is mindful of the significant impact the application of the administrative, executive and professional exemption will have on the structuring, functioning and expense of the Members' and Senators' personal offices and committee offices. However, the Board notes that private sector and state and local government employers face the same difficulties. And the Board has not found any sound, principled basis for modifying the exemption regulation for Congress and its instrumentalities. That resolved, the Board nonetheless wishes to make clear its intent to provide, as time and resources permit, appropriate general guidance to the Congress and its instrumentalities on how to identify and justify which employees are exempt. Such efforts made through the Office's education and information programs, will attempt to assist employing offices in determining which job duties will be considered exempt under the executive, administration or professional criteria.

Part 547, which defines, pursuant to Section 7(e)(3)(b) the standard that bona fide thrift or savings plans must meet in order not to be included within an employee's regular rate of pay for purposes of calculating overtime obligations under Section 7 of the FLSA. This is included in light of Section 203(a)1) of the CAA, which specifically applied the rights and protections of Section 7 of the FLSA.

Part 570, which sets forth the limitations on the use of child labor. This Part implements Section 12(c) of the FLSA, prohibiting oppressive child labor, as defined by Section 3(l) of the same Act. The former section is specifically referenced in Section 203(a)(1) of the CAA, while the latter must be referenced by reason of Section 225(f)(1) of the CAA. The inclusion of this Part in the separate regulations of the Senate is necessitated by the fact that the Senate allows for the appointment of congressional pages below the age of 16, unlike the House of Representatives, which by law sets a minimum age of 16 for such employees. For children under age 16, the FLSA regulations impose limitations on hours worked during the school year. Part 570 is also included in the separate regulations applicable to all other covered employees and employing offices. Given the hazardous nature of some of the activities of the support functions, such as maintenance and repair, Part 570 regulations are being proposed in the event that such instrumentalities employ children under 18 years of age. It is noted that the Board has not adopted regulations comparable to those set forth in the Labor Department's Subpart B (29 C.F.R. Sections 570.5-.27), authorizing the issuance of certificates of age. In addition, with respect to Section 570.52, governing the hazardous occupation of motor-vehicle driver and outside helper, the Board is not adopting the special exemption for school bus driving because by its terms no employing offices would satisfy the criteria of the regulation.

C. Secretary of Labor's regulations that the Board proposes not to adopt

In reviewing the remaining parts of the Labor Department's regulations, it is readily apparent that some have no application to the employing offices within the legislative branch. For this reason, the Board is not including them within its substantive regulations. Among the excluded regulations are: Part 510, which pertains to the application of the minimum wage provisions to Puerto Rico; Part 511, establishing a wage order procedure for American Samoa; Part 515, authorizing the utilization of State government agencies for investigations and inspections; Part 530, governing the employment of industrial homeworkers in certain industries; Part 549, defining the requirements of a ''bona fide profit-sharing plan or trust;'' Part 550, defining the term ''talent fees;'' Part 552, regulating the application of the FLSA to domestic service; Part 575, addressing child labor in certain agricultural employment; Parts 578, 579, and 580, implementing the civil money penalties provisions of the FLSA; and Part 679, dealing with industries in American Samoa. Unless public comments suggest otherwise, the Board intends including in the adopted regulations a provision stating that the Board has issued regulations on all matters for which the CAA requires a regulation. See Section 411 of the CAA.

Other substantive regulations could have application in the event that an employing office wished to avail itself of certain special wage rates, subminimum wage exemptions or overtime exemptions under the FLSA. These are found in: Parts 519–528, which authorize subminimum wages for full-time students, student-learners, apprentices, learners, messengers, workers with disabilities, and student workers; Part 548, which authorizes in the collective bargaining context the establishment of basic wage rates for overtime compensation purposes; and Part 551, which implements an overtime exemption for local delivery drivers and helpers. Unless public comments provide a sufficient justification to the contrary the Board is not proposing the adoption of regulations covering the foregoing subjects.

III. The Interpretive Bulletins and Other Relevant Guidance

In addition to the substantive regulations found in Subchapter A, the Department of Labor has issued, under Subchapter B, ''Statements of General Policy or Interpretations Not Directly Related to Regulations.'' 29 C.F.R Parts 775–794. Usually called Interpretive Bulletins, these statements make available in one place the official interpretations which guide the Secretary of Labor and the Wage and Hour Administrator in the performance of their duties. As the interpretations of an administering agency, such statements are usually given some deference by the courts. As the Supreme Court has observed: ''the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in the consideration, the validity of its reasoning its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'' *Skidmore* v. *Swift,* 323 U.S. 134, 140 (1944).

However, unlike ''substantive regulations,'' these interpretations are not issued by the agency pursuant to its statutory authority to implement the statute and, more significantly, do not have the force and effect of law. See *Batterton* v. *Francis,* 432 U.S. 416, 425 n.9 (1977). The Board's mandate is only to issue substantive regulations that are ''the same as the substantive regulations of the Secretary of Labor to implement the statutory provision [of the FLSA] applied'' by Section 204(a) of the CAA unless modified for good cause (CAA Section 203 (c)(2)). Therefore, the Board, does not propose to adopt the non-substantive interpretations of the DOL and its Wage and Hour Division as substantive regulations under the CAA. Moreover, the Board is not proposing to issue the Department's interpretations as its own interpretations of the FLSA rights and protections made applicable under the CAA at this time. However, as discussed below, employing offices should be advised that, pursuant to the Portal to Portal Act, the Board will give due consideration to the Secretary's interpretations of the FLSA.

Application of the Portal to Portal Act.—The Portal to Portal Act, 61 Stat. 84 (1947), codified generally at 29 U.S.C. Sections 216 and 251, et seq. (''PPA''), contains provisions which affect the rights and liabilities of employees and employers with regard to alleged underpayment of minimum or overtime wages under the FLSA. Section 4 of the PPA excludes from the definition of hours worked both activities preliminary to or postliminary to the worker's principal activities and travel time absent a contract, custom or practice to the contrary. 29 U.S.C. Section 254. Sections 9 and 10 of the PPA provide the employer with a defense against liability or punishment in any action or proceeding brought against it for failure to comply with the minimum wage and overtime provisions of the FLSA, where the employer pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy of the Wage and Hour Administrator of the Department of Labor. 29 U.S.C. Sections 258–259. The PPA also contains provisions which restrict and limit employee suits under section 16(b) of the FLSA. For example, section 11 of the PPA provides that in any action brought under section 216 of the FLSA, the court may in its discretion, subject to prescribed conditions, award no liquidated damages or award any amount of such damages not to exceed the amount specified in section 16(b) of the FLSA. 29 U.S.C. Section 260.

The Board has determined that the above provisions of the PPA are incorporated into section 203 of the CAA, either as an amendment to section 16(b) of the FLSA (which is expressly applied to the legislative branch under section 203(b) of the CAA), or by virtue of section 225(f) of the CAA, which applies the definitions and exemptions of the FLSA to the extent not inconsistent with the CAA. To that end, the Board will give due consideration to the interpretations of the FLSA of

the Secretary of Labor. Moreover, employing offices may utilize these interpretations in attempting to understand the rights and protections under the FLSA that have been made applicable by the CAA. Unless and until the Secretary's interpretive statements are superseded or interpretative guidance or decisions to the contrary are issued by the Board or the courts, they may be relied upon for purposes of defending against claims brought under the CAA to the same extent as private sector employers may properly rely upon them in actions brought under the FLSA.

Joint Employer Doctrine.—The Board solicited comments in the ANPRM on whether and to what extent the joint employment doctrine as developed under the FLSA is applicable under the CAA. The comments generally advocated adoption of the doctrine to employing offices of the Congress. However, since the issue of joint employment is addressed through a DOL interpretive bulletin set forth in Part 791, 29 C.F.R., rather than a substantive regulation, the Board is not adopting it as such nor issuing it as its own interpretive statement. See discussion at Section III.

Equal Pay Act.—With respect to the Equal Pay Act (EPA), which is included in Section 6(d) of the FLSA, 29 U.S.C. Section 206(d), the Secretary of Labor promulgated interpretative regulations that were originally included in 29 C.F.R. Part 800. Pursuant to the provisions of Reorganization Plan No. 1 of 1978, as confirmed by the Congress in Public Law 98–532, 98 Stat. 2705 (1984), enforcement and administration of the EPA was transferred from the Secretary of Labor to the Equal Employment Opportunity Commission (EEOC). The EEOC promulgated its own interpretations implementing the EPA at 29 C.F.R. Part 1620. Thereafter, the Secretary deleted its interpretations. 52 FR 2517 (Jan. 23, 1987). Thus, there are no substantive regulations implementing the EPA. Under the rationale previously stated regarding the Portal to Portal Act, the Board declines to incorporate the EEOC interpretations as substantive regulations under the CAA but will recognize them as is appropriate.

Opinion letters.—Commenters asked that the Board consider establishing a process under which the Office or the Board would issue opinion letters and upon which employing offices could rely, similar to the procedure followed by the Wage and Hour Administrator in sometimes providing such opinions at the request of private sector employers. The Board understands employing offices' desire for guidance and clarity regarding their obligations under the CAA.

To the extent that the Board itself can address issues through regulations or interpretations, it will do so. Moreover, the Office intends to provide appropriate education and technical assistance as part of its education and information responsibilities. But for the reasons stated here, the Board and the Office's ability to do so is limited by legal, resource and policy considerations. As is the case in the private sector context, many issues under these statutes can only be definitively resolved through case-by-case adjudication on particular facts. Moreover, except in the context of statutes subject to the Portal to Portal Act, it is doubtful that the Board or the Office has the statutory authority to issue guidance with legal effect (outside of the adjudicatory or rulemaking contexts); we are not aware of any such legal authorization for Executive Branch agencies to do so in the context of applying these same laws to the private sector. Further, the resources of the Board and the Office are limited: the first year appropriation is for $2.5 million. These resources are substantially less than those available to analogous Executive Branch agencies that administer fewer laws. Finally, public comment has not provided the Board with the facts necessary for yet making any of these determinations—and a detailed evidentiary record is necessary for such judgment to be made. In short, particularly in light of the various statutory responsibilities of the Office and the Board, it is not possible to give answers with legal effect to each individual request for information and guidance. While the Board will structure education and information programs to assist employees and employing offices, it is forced to respond that, like private employers, employing offices will generally have to rely on their own counsel and human resource advisors in determining their compliance with the Congressional Accountability Act.

IV. Method of Approval

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 21st day of November, 1995.

GLEN D. NAGER,
Chair of the Board,
Office of Compliance.

SUBTITLE A—REGULATIONS RELATING TO THE SENATE AND ITS EMPLOYING OFFICES—S SERIES

CHAPTER III—REGULATIONS RELATING TO THE RIGHTS AND PROTECTIONS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

PART H501—GENERAL PROVISIONS

Sec.
S501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
S501.101 Purpose and scope.
S501.102 Definitions.
S501.103 Coverage.
S501.104 Administrative authority.
S501.105 Effect of Interpretations of the Labor Department.
S501.106 Application of the Portal-to-Portal Act of 1947.

§ S501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the parts of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding parts of the Office of Compliance (CO) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

Part 531: Wage payments under the Fair Labor Standards Act of 1938—Part S531.

Part 541: Defining and delimiting the terms ''bona fide executive,'' ''administrative,'' and ''professional'' employees—Part S541.

Part 547: Requirements of a ''Bona fide thrift or savings plan''—Part S547.

Part 570: Child labor—Part S570.

SUBPART A—MATTERS OF GENERAL APPLICABILITY

§ S501.101 Purpose and scope.

(a) Section 203 of the Congressional Accountability Act (CAA) provides that the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. §§ 206(a)(1) and (d), 207, 212(c)) shall apply to covered employees of the legislative branch of the Federal government. Section 301 of the CAA creates the Office of Compliance as an independent office in the legislative branch for enforcing the rights and protections of the FLSA, as applied by the CAA.

(b) The FLSA as applied by the CAA provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Included also in the FLSA are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the FLSA exempts specified employees or groups of employees from the application of certain of its provisions.

(c) This chapter contains the substantive regulations with respect to the FLSA that the Board of Directors of the Office of Compliance has adopted pursuant to Sections 203(c) and 304 of the CAA, which require that the Board promulgate regulations that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of § 203 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

§ S501.102 Definitions.

For purposes of this chapter:

(a) *CAA* means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§ 1301–1438).

(b) *FLSA* or *Act* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.).

(c) *Covered employee* means any employee of the Senate, including an applicant for employment and a former employee.

(d) *Employee of the Senate* includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by (1) the Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment.

(e) *Employing office* and *employer* mean (1) the personal office of a Senator; (2) a committee of the Senate or a joint committee; or (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the Senate.

(f) *Board* means the Board of Directors of the Office of Compliance.

(g) *Office* means the Office of Compliance.

§ S501.103 Coverage.

The coverage of Section 203 of the CAA extends to any covered employee of an employing office without regard to whether the covered employee is engaged in commerce or the production of goods for interstate commerce and without regard to size, number of employees, amount of business transacted, or other measure.

§ S501.104 Administrative authority.

(a) The Office of Compliance is authorized to administer the provisions of Section 203 of the Act with respect to any covered employee or covered employer.

(b) The Board is authorized to promulgate substantive regulations in accordance with the provisions of Sections 203(c) and 304 of the CAA.

(c) The Board may in its discretion from time to time issue interpretative statements providing guidance to employees and to employing offices on the rights and protections established under the FLSA that are made applicable by Sections 203(a) and 225 of the CAA.

§ S501.105 Effect of Interpretations of the Department of Labor.

(a) In administering the FLSA, the Wage and Hour Division of the Department of Labor has issued not only substantive regulations but also interpretative bulletins. Substantive regulations represent an exercise of statutorily-delegated lawmaking authority from the legislative branch to an administrative agency. Generally, they are proposed in accordance with the notice-and-comment procedures of the Administrative Procedure Act (APA), 5 U.S.C. §553. Once promulgated, such regulations are considered to have the force and effect of law, unless set aside upon judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See *Batterton* v. *Francis,* 432 U.S. 416, 425 n.9 (1977). See also 29 C.F.R. §790.17(b) (1994). Unlike substantive regulations, interpretative statements, including bulletins and other releases of the Wage and Hour Division, are not issued pursuant to the provisions of the APA and may not have the force and effect of law. Rather, they may only constitute official interpretations of the Department of Labor with respect to the meaning and application of the minimum wage, maximum hour, and overtime pay requirements of the FLSA. See 29 C.F.R. §790.17(c) (citing Final Report of the Attorney General's Committee on Administrative Procedure, Senate Document No.8, 77th Cong., 1st Sess., at p. 27 (1941)). The purpose of such statements is to make available in one place the interpretations of the FLSA which will guide the Secretary of Labor and the Wage and Hour Administrator in the performance of their duties unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. The Supreme Court has observed: ''[T]he rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in the consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'' *Skidmore* v. *Swift,* 323 U.S. 134, 140 (1944).

(b) Section 203(c) of the CAA provides that the substantive regulations implementing Section 203 of the CAA shall be ''the same as substantive regulations promulgated by the Secretary of Labor'' except where the Board finds, for good cause shown, that a modification would more effectively implement the rights and protections established by the FLSA. Thus, the CAA by its terms does not mandate that the Board adopt the interpretative statements of the Department of Labor or its Wage and Hour Division. The Board is thus not adopting such statements as part of its substantive regulations.

§ S501.106 Application of the Portal-to-Portal Act of 1947.

(a) Consistent with Section 225 of the CAA, the Portal to Portal Act (PPA), 29 U.S.C. §§216 and 251 *et seq.,* is applicable in defining and delimiting the rights and protections of the FLSA that are prescribed by the CAA. Section 10 of the PPA, 29 U.S.C. §259, provides in pertinent part: [N]o employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, * * * if he pleads and proves that the act or omission complained of was in good faith in conformity with and reliance on any written administrative regulation, order, ruling, approval or interpretation of [the Administrator of the Wage and Hour Division of the Department of Labor] * * * or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) In defending any action or proceeding based on any act or omission arising out of section 203 of the CAA, an employing office may satisfy the standards set forth in subsection (a) by pleading and proving good faith reliance upon:

(1) Any written administrative regulation, order, decision, ruling, approval or interpretation, or any administrative practice or enforcement policy, of the Board.

(2) Any written administrative regulation, order, ruling, approval or interpretation, of the Administrator of the Wage and Hour Division of the Department of Labor: *Provided,* that such regulation, order, ruling approval or interpretation had not been superseded at the time of reliance by any regulation, order, decision, ruling, approval or interpretation, or any administrative practice or enforcement policy, of the Board or the courts.

PART S531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

SUBPART A—PRELIMINARY MATTERS

Sec.
S531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
S531.1 Definitions.
S531.2 Purpose and scope.

SUBPART B—DETERMINATIONS OF ''REASONABLE COST''; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS

S531.3 General determinations of ''reasonable cost''.
S531.6 Effects of collective bargaining agreements.

SUBPART A—PRELIMINARY MATTERS

§ S531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

531.1 Definitions.—S531.1.

531.2 Purpose and scope.—S531.2.

531.3 General determinations of ''reasonable cost''.—S531.3.

531.6 Effects of collective bargaining agreements.—S531.6.

§ S531.1 Definitions.

(a) Administrator means the Administrator of the Wage and Hour Division or his authorized representative. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 3(m) of the Act.

(b) Act means the Fair Labor Standards Act of 1938, as amended.

§ S531.2 Purpose and scope.

(a) Section 3(m) of the Act defines the term ''wage'' to include the ''reasonable cost', as determined by the Secretary of Labor, to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. In addition, section 3(m) gives the Secretary authority to determine the ''fair value'' of such facilities on the basis of average cost to the employer or to groups of employers similarly situated, on average value to groups of employees, or other appropriate measures of ''fair value'' Whenever so determined and when applicable and pertinent, the ''fair value'' of the facilities involved shall be includable as part of ''wages'' instead of the actual measure of the costs of those facilities. The section provides, however, that the cost of board, lodging, or other facilities shall not be included as part of ''wages'' if excluded therefrom by a bona fide collective bargaining agreement. Section 3(m) also provides a method for determining the wage of a tipped employee.

(b) This part 531 contains any determinations made as to the ''reasonable cost'' and ''fair value'' of board, lodging, or other facilities having general application.

SUBPART B—DETERMINATIONS OF ''REASONABLE COST'' AND ''FAIR VALUE''; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS

§ S531.3 General determinations of "reasonable cost."

(a) The term reasonable cost as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) Reasonable cost does not include a profit to the employer or to any affiliated person.

(c) The reasonable cost to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer: *Provided,* That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term good accounting practices does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term depreciation includes obsolescence.

(d)(1) The cost of furnishing ''facilities'' found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

(2) The following is a list of facilities found by the Administrator to be primarily for the benefit of convenience of the employer. The list is intended to be illustrative rather than exclusive: (i) Tools of the trade and other materials and services incidental to carrying on the employer's business; (ii) the cost of any construction by and for the employer;

(iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

§ S531.6 Effects of collective bargaining agreements.

(a) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(b) A collective bargaining agreement shall be deemed to be ''bona fide'' when pursuant to the provisions of section 7(b)(1) or 7(b)(2) of the FLSA it is made with the certified representative of the employees under the provisions of the CAA.

PART S541—DEFINING AND DELIMITING THE TERMS ''BONA FIDE EXECUTIVE,'' ''ADMINISTRATIVE,'' OR ''PROFESSIONAL'' CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN SECONDARY SCHOOL)

SUBPART A—GENERAL REGULATIONS

Sec.
S541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
S541.01 Application of the exemptions of section 13(a)(1) of the FLSA.
S541.1 Executive.
S541.2 Administrative.
S541.3 Professional.
S541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees.

SUBPART A—GENERAL REGULATIONS

§ S541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

541.1 Executive.—S541.1.

541.2 Administrative.—S541.2.

541.3 Professional.—S541.3.

541.5b Equal pay provisions of section 6(d) of the FLSA apply to executive, administrative, and professional employees.—S541.5b.

§ S541.01 Application of the exemptions of section 13(a)(1) of the FLSA.

(a) Section 13(a)(1) of the FLSA, which provides certain exemptions for employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in a secondary school), applies to covered employees by virtue of Section 225(f)(1) of the CAA.

(b) The substantive regulations set forth in this part are promulgated under the authority of sections 203(c) and 304 of the CAA, which require that such regulations be the same as the substantive regulations promulgated by the Secretary of Labor except where the Board determines for good cause shown that modifications would be more effective for the implementation of the rights and protections of covered employees.

§ S541.1 Executive.

The term *employee employed in a bona fide executive * * * capacity* in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the management of an employing office in which he is employed or of a customarily recognized department of subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the employing office in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section

§ S541.2 Administrative.

The term *employee employed in a bona fide * * * administrative * * * capacity* in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of either: (1) The performance of office or nonmanual work directly related to management policies or general operations of his employer or his employer's customers, or (2) The performance of functions in the administration of the Congressional Page School or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assists the head of an employing office, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or (2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or (3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities, or (2) Who, in the case of academic administrative personnel, is compensated for services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers of the Congressional Page School: *Provided*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all the requirements of this section.

§ S541.3 Professional.

The term *employee employed in a bona fide * * * professional capacity* in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the performance of: (1) Work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or (2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or (3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the Congressional Page School, or (4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $170 per week, exclusive of board, lodging or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (3), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring

invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Provided further,* That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(4) of this section and who is compensated on an hourly basis at a rate in excess of 6½ times the minimum wage provided by section 6 of the FLSA as applied by the CAA.

§ S541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees.

The FLSA, as amended and as applied by the CAA, includes within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) under section 13(a)(1) of the FLSA. Thus, for example, where an exempt administrative employee and another employee of the employing office are performing substantially ''equal work,'' the sex discrimination prohibitions of section 6(d) are applicable with respect to any wage differential between those two employees.

PART S547—REQUIREMENTS OF A ''BONA FIDE THRIFT OR SAVINGS PLAN.''

Sec.
S547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
S547.0 Scope and effect of part.
S547.1 Essential requirements of qualifications.
S547.2 Disqualifying provisions.

§ S547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

547.0 Scope and effect of part.—S547.0.

547.1 Essential requirements of qualifications.—S547.1.

547.2 Disqualifying provisions.—S547.2.

§ S547.0 Scope and effect of part.

(a) The regulations in this part set forth the requirements of a ''bona fide thrift or savings plan'' under section 7(e)(3)(b) of the Fair Labor Standards Act of 1938, as amended (FLSA), as applied by the CAA. In determining the total remuneration for employment which section 7(e) of the FLSA requires to be included in the regular rate at which an employee is employed, it is not necessary to include any sums paid to or on behalf of such employee, in recognition of services performed by him during a given period, which are paid pursuant to a bona fide thrift or savings plan meeting the requirements set forth herein. In the formulation of these regulations due regard has been given to the factors and standards set forth in section 7(e)(3)(b) of the Act.

(b) Where a thrift or savings plan is combined in a single program (whether in one or more documents) with a plan or trust for providing old age, retirement, life, accident or health insurance or similar benefits for employees, contributions made by the employer pursuant to such thrift or savings plan may be excluded from the regular rate if the plan meets the requirements of the regulation in this part and the contributions made for the other purposes may be excluded from the regular rate if they meet the tests set forth in regulations.

§ S547.1 Essential requirements for qualifications.

(a) A ''bona fide thrift or savings plan'' for the purpose of section 7(e)(3)(b) of the FLSA as applied by the CAA is required to meet all the standards set forth in paragraphs (b) through (f) of this section and must not contain the disqualifying provisions set forth in § S547.2.

(b) The thrift or savings plan constitutes a definite program or arrangement in writing, adopted by the employer or by contract as a result of collective bargaining and communicated or made available to the employees, which is established and maintained, in good faith, for the purpose of encouraging voluntary thrift or savings by employees by providing an incentive to employees to accumulate regularly and retain cash savings for a reasonable period of time or to save through the regular purchase of public or private securities.

(c) The plan specifically shall set forth the category or categories of employees participating and the basis of their eligibility. Eligibility may not be based on such factors as hours of work, production, or efficiency of the employees: *Provided, however,* That hours of work may be used to determine eligibility of part-time or casual employees.

(d) The amount any employee may save under the plan shall be specified in the plan or determined in accordance with a definite formula specified in the plan, which formula may be based on one or more factors such as the straight-time earnings or total earnings, base rate of pay, or length of service of the employee.

(e) The employer's total contribution in any year may not exceed 15 percent of the participating employees' total earnings during that year. In addition, the employer's total contribution in any year may not exceed the total amount saved or invested by the participating employees during that year: *Provided, however,* That a plan permitting a greater contribution may be submitted to the Administrator and approved by him as a ''bona fide thrift or savings plan'' within the meaning of section 7(e)(3)(b) of the Act if: (1) The plan meets all the other standards of this section; (2) The plan contains none of the disqualifying factors enumerated in § S547.2; (3) The employer's contribution is based to a substantial degree upon retention of savings; and (4) The amount of the employer's contribution bears a reasonable relationship to the amount of savings retained and the period of retention.

(f) The employer's contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employee retains his savings or investment in the plan: *Provided,* That no employee's share determined in accordance with the plan may be diminished because of any other remuneration received by him.

§ S547.2 Disqualifying provisions.

(a) No employee's participation in the plan shall be on other than a voluntary basis.

(b) No employee's wages or salary shall be dependent upon or influenced by the existence of such thrift or savings plan or the employer's contributions thereto.

(c) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan may not be based upon the employee's hours of work, production or efficiency.

PART S570—CHILD LABOR REGULATIONS

SUBPART A—GENERAL

Sec.
S570.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
S570.1 Definitions.
S570.2 Minimum age standards.

SUBPART C—EMPLOYMENT OF MINORS BETWEEN 14 AND 16 YEARS OF AGE (CHILD LABOR REG. 3)

S570.31 Determination.
S570.32 Effect of this subpart.
S570.33 Occupations.
S570.35 Periods and conditions of employment.

SUBPART A—GENERAL

§ S570.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance Regulations under Section 202 of the CAA:

Secretary of Labor Regulations—OC Regulations.

570.1 Definitions.—S570.1.

570.2 Minimum age standards.—S570.2.

570.31 Determinations.—S570.31.

570.32 Effect of this subpart.—S570.32.

570.33 Occupations.—S570.33.

570.35 Periods and conditions of employment.—S570.35.

§ S570.1 Definitions.

As used in this part:

(a) Act means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219).

(b) Oppressive child labor means employment of a minor in an occupation for which he does not meet the minimum age standards of the Act, as set forth in Sec. S570.2 of this subpart.

(c) Oppressive child labor age means an age below the minimum age established under the Act for the occupation in which a minor is employed or in which his employment is contemplated.

(d) [Reserved]

(e) [Reserved]

(f) Secretary or Secretary of Labor means the Secretary of Labor, United States Department of Labor, or his authorized representative.

(g) Wage and Hour Division means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

(h) Administrator means the Administrator of the Wage and Hour Division or his authorized representative.

§ S570.2 Minimum age standards.

(a) All occupations except in agriculture. (1) The Act, in section 3(1), sets a general 16-year minimum age which applies to all employment subject to its child labor provisions in any occupation other than in agriculture, with the following exceptions: (i) The Act authorizes the Secretary of Labor to provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor, if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being (see subpart C of this part); and (ii)

The Act sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being. (2) The Act exempts from its minimum age requirements the employment by a parent of his own child, or by a person standing in place of a parent of a child in his custody, except in occupations to which the 18-year age minimum applies and in manufacturing and mining occupations.

SUBPART B [RESERVED]

SUBPART C—EMPLOYMENT OF MINORS BETWEEN 14 AND 16 YEARS OF AGE (CHILD LABOR REG. 3)

§ S570.31 Determination.

The employment of minors between 14 and 16 years of age in the occupations, for the periods, and under the conditions hereafter specified does not interfere with their schooling or with their health and well-being and shall not be deemed to be oppressive child labor.

§ S570.32 Effect of this subpart.

In all occupations covered by this subpart the employment (including suffering or permitting to work) by an employer of minor employees between 14 and 16 years of age for the periods and under the conditions specified in § S570.35 shall not be deemed to be oppressive child labor within the meaning of the Fair Labor Standards Act of 1938.

§ S570.33 Occupations.

This subpart shall apply to all occupations other than the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations which the Secretary of Labor may, pursuant to section 3(1) of the Fair Labor Standards Act and Reorganization Plan No. 2, issued pursuant to the Reorganization Act of 1945, find and declare to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being;

(f) Occupations in connection with: (1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means; (2) Warehousing and storage; (3) Communications and public utilities; (4) Construction (including demolition and repair); except such office (including ticket office) work, or sales work, in connection with paragraphs (f)(1), (2), (3), and (4) of this section, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

§ S570.35 Periods and conditions of employment.

(a) Except as provided in paragraph (b) of this section, employment in any of the occupations to which this subpart is applicable shall be confined to the following periods: (1) Outside school hours; (2) Not more than 40 hours in any 1 week when school is not in session; (3) Not more than 18 hours in any 1 week when school is in session; (4) Not more than 8 hours in any 1 day when school is not in session; (5) Not more than 3 hours in any 1 day when school is in session; and (6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

FAIR LABOR STANDARDS ACT

PROPOSED REGULATIONS RELATING TO THE HOUSE OF REPRESENTATIVES AND ITS EMPLOYING OFFICES

OFFICE OF COMPLIANCE

The Congressional Accountability Act of 1995: Extension of Rights and Protections Under the Fair Labor Standards Act of 1938 (Notices of Proposed Rulemaking with respect to Interns and Irregular Work Schedules were issued on October 11. The comment period closed on November 13. Final rules will be issued separately pursuant to Section 304 of the CAA.)

Notice of proposed rulemaking

Summary: The Board of Directors of the Office of Compliance is publishing proposed rules to implement section 203(c) of the Congressional Accountability Act of 1995 (P.L. 104–1, Stat. 10) (''CAA''). The proposed regulations, which are to be applied to the House of Representatives and employees of the House of Representatives, set forth the recommendations of the Deputy Executive Director for the House of Representatives, Office of Compliance, as approved by the Board of Directors, Office of Compliance.

Dates: Comments are due within 30 days after publication of this Notice in the Congressional Record.

Addresses: Submit written comments to the Chair of the Board of Directors, Office of Compliance, Room LA 200, Library of Congress, Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 252–3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Deputy Executive Director for the House of Representatives, Office of Compliance at (202) 252–3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this Notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, (202) 224–2705.

Supplementary Information:

I. Background

A. Introduction

The Congressional Accountability Act of 1995 (''CAA''), PL 104-1, was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 203(a) of the CAA applies the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1) and (d), 207, 212(c) (''FLSA'') to covered employees and employing offices. Section 203(c) of the CAA (2 U.S.C. Section 1313(c)) directs the Board of Directors of the Office of Compliance established under the CAA to issue regulations to implement the section. Section 203(c)(2) (2 U.S.C. Section 1313(c)(2)) further states that such regulations, with the exception of certain irregular work schedule regulations to be issued under section 203(a)(3), ''shall be the same as substantive regulations issued by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

B. Advance notice of proposed rulemaking

On September 28, 1995, the Board of the Office of Compliance issued an Advance Notice of Proposed Rulemaking (''ANPRM'') soliciting comments from interested parties in order to obtain participation and information early in the rulemaking process. 141 Cong. R. S14542 (daily ed., Sept. 28, 1995). In addition to inviting comment on specific questions arising under five of the statutes made applicable by the CAA in the ANPRM, the Board and the statutory appointees of the Office sought consultation with the Chair of the Administrative Conference of the United States, the Secretary of Labor and the Director of the Office of Personnel Management with regard to the development of these regulations in accordance with section 304(g) of the CAA. The Office has also consulted with interested parties to further its understanding of the need for and content of appropriate regulations. Based on the information gleaned from these consultations and the comments on the ANPRM, the Board of Directors of the Office of Compliance is publishing these proposed rules, pursuant to Section 203(c)(1) of the CAA (2 U.S.C. Section 1313(c)(1)).

1. Modification of the regulations of the Department of Labor

In the ANPRM, the Board asked the question, ''Whether and to what extent should the Board modify the Secretary's Regulations?'' The Board received 15 comments on the ANPRM: two from Senators, four from House Members (one from the leadership of the Committee with primary jurisdiction for the CAA and one from three of the sponsors of the CAA), one from the Secretary of the Senate and three from House offices (two from institutional offices and one from a Member's Chief of Staff), four from business coalitions or associations representing an array of private employers, and one from a labor organization.

Those commenters who expressed views on the ANPRM cited both the statute and the legislative history in taking the position that the CAA presumes that the regulations of the Department of Labor should not be modified. Illustrative comments included the following:

''[Section 304 of the CAA] evidences clear legislative intent that the Board apply these rights and protections to Congressional employees in a manner comparable to and consistent with the rights and protections applicable to employees in the private sector under regulations adopted by the Secretary (DOL). . . . The [CAA] requires that the regulations issued by the Board be the same as those issued by DOL unless the Board determines that modification would more effectively implement the rights and protections of the laws made applicable under the [CAA].''

''[I]f a law is right for the private sector, it is right for Congress; . . . Consistent with [this] principle, we would urge the Office not to deviate (except in those few areas where expressly authorized by the CAA) from applying the laws in the same manner in which they are applied to the private sector.

* * * * *

[W]e have not identified any situations in which modifications [of the DOL regulations] would be appropriate.''

''There are no circumstances that justify 'good cause' for adopting regulations that deviate from those currently applied to private sector employers.''

''[Section 203(c)(2)] confers on the Office of Compliance only very limited authority to

deviate from the present DOL regulations. The legislative history to the 'good cause' exception likewise makes clear that this authority is to be used by the Office of Compliance sparingly.''

* * * * *

''The legislative history of the CAA demands that the Office of Compliance apply to Congress the *same* regulations as those imposed on the private sector.''

''[W]e urge the Board to refrain from modifying regulations promulgated by the Department of Labor and other Executive agencies. Use of established regulations will provide the Board, employees and employing offices with a body of instructive case law and interpretive documents.''

''While the Office serves an important implementation and enforcement role, it must not place itself in the position of shielding Congress from substantive requirements imposed on private businesses.''

Based on the comments and the Board's understanding of the law and the institutions to which it is being made applicable, the Board is issuing the Secretary's regulations with only these limited modifications: Technical changes in the nomenclature and deletion of those sections clearly inapplicable to the legislative branch.

2. Notice posting and recordkeeping

The ANPRM also invited comment on whether the recordkeeping and notice posting requirements of the various laws made applicable by the CAA are incorporated as statutory requirements of the CAA. The ANPRM inquired whether, if such requirements were not incorporated, could and should the Board develop its own requirements pursuant to its ''good cause'' authority. The ANPRM also invited comment on proposing guidelines and models for recordkeeping and notice posting.

Commenters were in agreement that recordkeeping and notice posting are important to the effective implementation of several of the statutes incorporated in the CAA. However, opinions as to whether the Board should require notice posting and recordkeeping were widely divergent. Several commenters expressed the view that the Board lacks the statutory authority to adopt notice posting and recordkeeping requirements and that the notice posting and recordkeeping requirements of the FLSA do not apply to Congress. Other commenters expressed the view that the Board has the authority to issue regulations to impose recordkeeping and notice posting requirements and that such regulations should be, in substance, the same as those with which the private sector must comply.

The Board agrees with those commenters who took the position that, if employing offices are to be treated the same as private sector employers are treated under FLSA, they should have to comply with the statute's notice posting and recordkeeping requirements. Moreover, the Board notes that notice posting and recordkeeping promote the full and effective enforcement of these incorporated rights and protections. In the Board's view, notice posting and recordkeeping may well be in employers' interests both as a sound personnel practice and in order to defend against subsequent litigation.

But while the CAA incorporates certain specific sections of the FLSA, the CAA explicitly did not incorporate the notice posting and recordkeeping requirements of Section 11, 29 U.S.C. §211 of the FLSA. Because the Board's authority to modify the Secretary's regulations for ''good cause'' does not authorize it to adopt regulatory requirements that are the equivalent of statutory requirements that Congress has omitted from the CAA, the Board has determined that it may not impose such requirements on employing offices. However, as various commenters suggest, the Board will provide guidance to employing offices concerning model recordkeeping practices as part of carrying out its program of education under section 301(h) of the CAA (2 U.S.C. 1381(h)).

The Board would also note that based upon their collective years of experience representing employers and employees with regard to various labor and employment laws, including the FLSA, the absence of recordkeeping and notice posting requirements may create a void which can only partially be filled by the program of education to be carried out by the Board pursuant to Section 301(h)(1) and the optional notice which will be distributed by the Board pursuant to Section 301(h)(2). The Board also would emphasize that employees will in many circumstances be able to establish a prima facie case simply by their own testimony estimating the hours worked by the employees where the employing office has failed to maintain adequate, accurate records. An employing office may find that its ability to respond to an employee's prima facie case is substantially burdened by its failure to keep accurate payroll and time-records. If Congress wishes to experience the same burdens as faced by the private sector and also to address these issues, it should enact recordkeeping requirements comparable to those of the FLSA. (Of course, like the regulations under those statutes, such recordkeeping requirements may leave to the discretion of each employing office the precise form and manner in which records will be kept.) But, in light of the text and structure of the CAA, the Board believes that it is up to Congress to decide whether to do so.

II. The proposed regulations

A. Background

Congress committed enforcement of the Fair Labor Standards Act of 1938 to the Department of Labor and its Wage and Hour Division, whose regulations and interpretations of that Act comprise almost one thousand pages of Chapter V, Title 29 of the Code of Federal Regulations. In enacting the CAA, however, Congress expressly refused to commit enforcement to the executive branch of the Federal government nor did Congress bring its employing offices under the FLSA itself. Instead, Congress carefully specified, through sectional references to the FLSA, the substantive rights and protections afforded to legislative employees, and precisely mandated procedures by which those rights and protections would be largely enforced by a new and independent office in the legislative branch, the Office of Compliance. Further, in granting the Board rulemaking authority with respect to the FLSA in Section 203(c)(1) of the CAA, Congress affirmatively commanded the Board to issue substantive regulations, with the important directive that they ''shall be the same as substantive regulations promulgated by the Secretary of Labor * * * except as the Board may determine, for good cause shown * * * that a modification of such regulations would be more effective for the implementation of rights and protections under'' the CAA.

In the Board's view, and notwithstanding what has been urged by some of the commenters, this unusual statutory framework neither mandates nor allows an uncritical, wholesale incorporation of all the regulations and interpretive statements issued by the Labor Department under the FLSA. Rather, this statutory framework requires the Board to cull from the vast body of FLSA material found in the Code of Regulations only those items that constitute ''substantive regulations'' as the term is understood under settled principles of administrative law. (*See Batterton* v. *Francis*, 422 U.S. 416, 425, n. 9 (1977)). Moreover, the statutory framework authorizes the Board to delete those substantive regulations that either have no application in the employing offices of the Congress or that are not likely to be invoked. For these reasons, the Board is not proposing their adoption, unless public comments establish a justification to the contrary. Finally, by limiting itself to substantive regulations, the Board is not adopting those portions of 29 C.F.R. chapter V that constitute the interpretative bulletins or statements of the Department of Labor and its Wage and Hour Division.

B. Proposed regulations

1. General provisions

The proposed regulations include an initial Part 501 which contains matters of general applicability including the purpose and scope of the regulations, definitions, coverage, and the administrative authority of the Board and the Office of Compliance. In addition, a section explains the effect of interpretative bulletins and statements of the Department of Labor, and another section provides for the application of the Portal to Portal Act. These latter sections are discussed below.

It is noted that the definition section incorporates the general provisions of section 101 of the CAA which defines ''employee,'' ''covered employee,'' ''employing office,'' and ''employee of the House of Representatives.'' Section 203 of the CAA, which applies the rights and protections of the FLSA, also contemplates the promulgation of a definitional regulation that excludes ''interns'' from the meaning of ''covered employee.'' The Board in a separate NPRM issued on October 11, 1995, proposed such a regulation, together with a regulation governing irregular work schedules and the receipt of compensatory time in lieu of overtime compensation. The Board is reviewing the public comments received in response to that NPRM and will issue a separate final rule on those issues.

It should be noted that section 225(f)(1) of the CAA provides that, except where inconsistent with definitions of the CAA itself, the definitions in the laws made applicable by the CAA shall also apply under the CAA. Thus, attention must be paid to those definitions found in the FLSA that are consistent with the CAA even if they are not expressly incorporated in the proposed regulations. In this regard, one commenter expressed concern over whether employing offices would be obligated to pay minimum wages and overtime compensation to individuals who do volunteer work, in light of the fact that under the FLSA ''employee'' may include certain volunteers. See 29 U.S.C. §203(e)(4)(A), which excludes from the definition of ''employee'' only certain volunteers who perform work for a State, political subdivision, or interstate governmental agency. Similarly, it is noted that, in enacting the CAA, Congress did make separate provision for excluding interns. Thus, the Board has concluded that, to the extent that volunteer activity would bring an individual under the coverage of the FLSA, similarly situated individuals would be treated in the same manner under the CAA.

2. Provisions derived from regulations of the Department of Labor:

Those regulations of the Department of Labor that are being adopted in substance include:

Part 531, which governs the manner in which an employee's wages are calculated taking into account the reasonable cost to

an employer of furnishing board, lodging, or other facilities. This Part is derived from Section 3(m) of the FLSA, which directs how the ''wage'' paid to an employee is determined. Section 3(m) must be treated as applicable under the CAA by virtue of Section 225(f)(1), which authorizes generally the inclusion of those definitions and exemptions that are consistent with definitions and exemptions of the CAA. However, it is noted that section 3(m) is inconsistent with the CAA insofar as the implementing regulations in Part 531, Title 29, C.F.R., provide procedures by which the Wage and Hour Administrator makes determinations in specific cases with respect to the furnishing of board, lodging, or other facilities. Because the Administrator has no role in the enforcement of the CAA by reason of Section 225(f)(3), and because the Board is not at this time authorizing the Office of Compliance to make such specific determinations, the Board proposes to delete the provisions setting forth those procedures. Similarly, the reference to ''tipped employees'' and the method by which their wages are determined are deleted because the applicable sections assign responsibility to the Administrator.

Part 541, which defines and delimits the bona fide executive, administrative, and professional employees who are exempt under Section 13(a) of the FLSA from the minimum wage and maximum hours requirements. The Board has determined that this exemption, commonly known as the ''white collar'' exemption, is applicable to employing offices of Congress by virtue of Section 225(f)(1) of the CAA.

In the ANPRM, the Board solicited public comment on whether and to what extent it should modify the Labor Department's regulations regarding this exemption. Generally, the commenters did not question the applicability of this exemption to covered employees under the CAA, and several commenters urged the adoption of all of the Department's regulations in Part 541, 29 C.F.R., including the interpretative bulletins, without any modification. Two commenters contended that the Board's regulations should grant a sweeping exemption for nearly all staff employees working in elected members' offices because they exercise independent judgment and discretion in performing their responsibilities.

Other commenters urged the Board to modify the Labor Department regulations to take into account the unique job responsibilities of staff working for an elected member either in a personal office, in a leadership office or on committee. Recognizing that job titles alone cannot be dispositive of who is an exempt employee, these commenters urged the Board to identify with particularity those job duties which, if performed by an employee, would render him or her an exempt executive, administrative, or professional employee.

The Board is proposing to adopt the Labor Department's substantive regulations contained in Subpart A of Part 541 of 29 C.F.R. that set forth the fundamental criteria for satisfying each of the three exemptions. But, for the reasons explained below, the Board is not formally adopting the interpretative bulletins contained in Subpart B of Part 541 of 29 C.F.R., which discuss and illustrate through examples the Department's understanding of the exemption criteria.

With respect to some commenters' request that the Board modify the white collar exemptions, upon reflection, the Board has reluctantly concluded that such a modification would not satisfy the ''good cause'' requirement of Section 203(c)(2) of the CAA. The Board recognizes that the Secretary's regulations and interpretations were promulgated in a different era, with different employment paradigms in mind. Thus, the Board appreciates the many difficulties that employing offices will have in interpreting and reconciling these regulations to present day realities. Moreover, the Board is mindful of the significant impact the application of the administrative, executive and professional exemption will have on the structuring, functioning and expense of the Members' and Senators' personal offices and committee offices. However, the Board notes that private sector and state and local government employers face the same difficulties. And the Board has not found any sound, principled basis for modifying the exemption regulation for Congress and its instrumentalities. That resolved, the Board nonetheless wishes to make clear its intent to provide, as time and resources permit, appropriate general guidance to the Congress and its instrumentalities on how to identify and justify which employees are exempt. Such efforts made through the Office's education and information programs, will attempt to assist employing offices in determining which job duties will be considered exempt under the executive, administration or professional criteria.

Part 547, which defines, pursuant to Section 7(e)(3)(b) the standard that bona fide thrift or savings plans must meet in order not to be included within an employee's regular rate of pay for purposes of calculating overtime obligations under Section 7 of the FLSA. This is included in light of Section 203(a)(1) of the CAA, which specifically applied the rights and protections of Section 7 of the FLSA.

Part 570, which sets forth the limitations on the use of child labor. This Part implements Section 12(c) of the FLSA, prohibiting oppressive child labor, as defined by Section 3(l) of the same Act. The former section is specifically referenced in Section 203(a)(1) of the CAA, while the latter must be referenced by reason of Section 225(f)(1) of the CAA. The inclusion of this Part in the separate regulations of the Senate is necessitated by the fact that the Senate allows for the appointment of congressional pages below the age of 16, unlike the House of Representatives, which by law sets a minimum age of 16 for such employees. For children under age 16, the FLSA regulations impose limitations on hours worked during the school year. Part 570 is also included in the separate regulations applicable to all other covered employees and employing offices. Given the hazardous nature of some of the activities of the support functions, such as maintenance and repair, Part 570 regulations are being proposed in the event that such instrumentalities employ children under 18 years of age. It is noted that the Board has not adopted regulations comparable to those set forth in the Labor Department's Subpart B (29 C.F.R. Sections 570.5–.27), authorizing the issuance of certificates of age. In addition, with respect to Section 570.52, governing the hazardous occupation of motor-vehicle driver and outside helper, the Board is not adopting the special exemption for school bus driving because by its terms no employing offices would satisfy the criteria of the regulation.

C. Secretary of Labor's Regulations That the Board Proposes Not to Adopt

In reviewing the remaining parts of the Labor Department's regulations, it is readily apparent that some have no application to the employing offices within the legislative branch. For this reason, the Board is not including them within its substantive regulations. Among the excluded regulations are: Part 510, which pertains to the application of the minimum wage provisions to Puerto Rico; Part 511, establishing a wage order procedure for American Samoa; Part 515, authorizing the utilization of State government agencies for investigations and inspections; Part 530, governing the employment of industrial homeworkers in certain industries; Part 549, defining the requirements of a ''bona fide profit-sharing plan or trust;'' Part 550, defining the term ''talent fees;'' Part 552, regulating the application of the FLSA to domestic service; Part 575, addressing child labor in certain agricultural employment; Parts 578, 579, and 580, implementing the civil money penalties provisions of the FLSA; and Part 679, dealing with industries in American Samoa. Unless public comments suggest otherwise, the Board intends including in the adopted regulations a provision stating that the Board has issued regulations on all matters for which the CAA requires a regulation. *See* Section 411 of the CAA.

Other substantive regulations could have application in the event that an employing office wished to avail itself of certain special wage rates, subminimum wage exemptions or overtime exemptions under the FLSA. These are found in: Parts 519–528, which authorize subminimum wages for full-time students, student-learners, apprentices, learners, messengers, workers with disabilities, and student workers; Part 548, which authorizes in the collective bargaining context the establishment of basic wage rates for overtime compensation purposes; and Part 551, which implements an overtime exemption for local delivery drivers and helpers. Unless public comments provide a sufficient justification to the contrary the Board is not proposing the adoption of regulations covering the foregoing subjects.

III. The interpretive bulletins and other relevant guidance

In addition to the substantive regulations found in Subchapter A, the Department of Labor has issued, under Subchapter B, ''Statements of General Policy or Interpretations Not Directly Related to Regulations.'' 29 C.F.R Parts 775–794. Usually called Interpretive Bulletins, these statements make available in one place the official interpretations which guide the Secretary of Labor and the Wage and Hour Administrator in the performance of their duties. As the interpretations of an administering agency, such statements are usually given some deference by the courts. As the Supreme Court has observed:

''the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in the consideration, the validity of its reasoning its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.''

Skidmore v. *Swift,* 323 U.S. 134, 140 (1944).

However, unlike ''substantive regulations,'' these interpretations are not issued by the agency pursuant to its statutory authority to implement the statute and, more significantly, do not have the force and effect of law. See *Batterton* v. *Francis,* 432 U.S. 416, 425 n.9 (1977). The Board's mandate is only to issue substantive regulations that are ''the same as the substantive regulations of the Secretary of Labor to implement the statutory provision [of the FLSA] applied'' by Section 204(a) of the CAA unless modified for good cause (CAA Section 203 (c)(2)). Therefore, the Board, does not propose to adopt the non-substantive interpretations of the DOL and its Wage and Hour Division as substantive regulations under the CAA.

Moreover, the Board is not proposing to issue the Department's interpretations as its own interpretations of the FLSA rights and protections made applicable under the CAA at this time. However, as discussed below, employing offices should be advised that, pursuant to the Portal to Portal Act, the Board will give due consideration the Secretary's interpretations of the FLSA.

Application of the Portal to Portal Act.—The Portal to Portal Act, 61 Stat. 84 (1947), codified generally at 29 U.S.C. Sections 216 and 251, et seq. (''PPA''), contains provisions which affect the rights and liabilities of employees and employers with regard to alleged underpayment of minimum or overtime wages under the FLSA. Section 4 of the PPA excludes from the definition of hours worked both activities preliminary to or postliminary to the worker's principal activities and travel time absent a contract, custom or practice to the contrary. 29 U.S.C. Section 254. Sections 9 and 10 of the PPA provide the employer with a defense against liability or punishment in any action or proceeding brought against it for failure to comply with the minimum wage and overtime provisions of the FLSA, where the employer pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy of the Wage and Hour Administrator of the Department of Labor. 29 U.S.C. Sections 258-259. The PPA also contains provisions which restrict and limit employee suits under section 16(b) of the FLSA. For example, section 11 of the PPA provides that in any action brought under section 216 of the FLSA, the court may in its discretion, subject to prescribed conditions, award no liquidated damages or award any amount of such damages not to exceed the amount specified in section 16(b) of the FLSA. 29 U.S.C. Section 260.

The Board has determined that the above provisions of the PPA are incorporated into section 203 of the CAA, either as an amendment to section 16(b) of the FLSA (which is expressly applied to the legislative branch under section 203(b) of the CAA), or by virtue of section 225(f) of the CAA, which applies the definitions and exemptions of the FLSA to the extent not inconsistent with the CAA. To that end, the Board will give due consideration to the interpretations of the FLSA of the Secretary of Labor. Moreover, employing offices may utilize these interpretations in attempting to understand the rights and protections under the FLSA that have been made applicable by the CAA. Unless and until the Secretary's interpretive statements are superseded or interpretative guidance or decisions to the contrary are issued by the Board or the courts, they may be relied upon for purposes of defending against claims brought under the CAA to the same extent as private sector employers may properly rely upon them in actions brought under the FLSA.

Joint Employer Doctrine.—The Board solicited comments in the ANPRM on whether and to what extent the joint employment doctrine as developed under the FLSA is applicable under the CAA. The comments generally advocated adoption of the doctrine to employing offices of the Congress. However, since the issue of joint employment is addressed through a DOL interpretive bulletin set forth in Part 791, 29 C.F.R., rather than a substantive regulation, the Board is not adopting it as such nor issuing it as its own interpretive statement. See discussion at Section III.

Equal Pay Act.—With respect to the Equal Pay Act (EPA), which is included in Section 6(d) of the FLSA, 29 U.S.C. Section 206(d), the Secretary of Labor promulgated interpretative regulations that were originally included in 29 C.F.R. Part 800. Pursuant to the provisions of Reorganization Plan No. 1 of 1978, as confirmed by the Congress in Public Law 98-532, 98 Stat. 2705 (1984), enforcement and administration of the EPA was transferred from the Secretary of Labor to the Equal Employment Opportunity Commission (EEOC). The EEOC promulgated its own interpretations implementing the EPA at 29 C.F.R. Part 1620. Thereafter, the Secretary deleted its interpretations. 52 FR 2517 (Jan. 23, 1987). Thus, there are no substantive regulations implementing the EPA. Under the rationale previously stated regarding the Portal to Portal Act, the Board declines to incorporate the EEOC interpretations as substantive regulations under the CAA but will recognize them as is appropriate.

Opinion Letters.—Commenters asked that the Board consider establishing a process under which the Office or the Board would issue opinion letters and upon which employing offices could rely, similar to the procedure followed by the Wage and Hour Administrator in sometimes providing such opinions at the request of private sector employers. The Board understands employing offices' desire for guidance and clarity regarding their obligations under the CAA.

To the extent that the Board itself can address issues through regulations or interpretations, it will do so. Moreover, the Office intends to provide appropriate education and technical assistance as part of its education and information responsibilities. But for the reasons stated here, the Board and the Office's ability to do so is limited by legal, resource and policy considerations. As is the case in the private sector context, many issues under these statutes can only be definitively resolved through case-by-case adjudication on particular facts. Moreover, except in the context of statutes subject to the Portal to Portal Act, it is doubtful that the Board or the Office has the statutory authority to issue guidance with legal effect (outside of the adjudicatory or rulemaking contexts); we are not aware of any such legal authorization for Executive Branch agencies to do so in the context of applying these same laws to the private sector. Further, the resources of the Board and the Office are limited: the first year appropriation is for $2.5 million. These resources are substantially less than those available to analogous Executive Branch agencies that administer fewer laws. Finally, public comment has not provided the Board with the facts necessary for yet making any of these determinations—and a detailed evidentiary record is necessary for such judgment to be made. In short, particularly in light of the various statutory responsibilities of the Office and the Board, it is not possible to give answers with legal effect to each individual request for information and guidance. While the Board will structure education and information programs to assist employees and employing offices, it is forced to respond that, like private employers, employing offices will generally have to rely on their own counsel and human resource advisors in determining their compliance with the Congressional Accountability Act.

IV. Method of approval

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 21st day of November, 1995.

GLEN D. NAGER,
Chair of the Board,
Office of Compliance.

SUBTITLE B—REGULATIONS RELATING TO THE HOUSE OF REPRESENTATIVES AND ITS EMPLOYING OFFICES—H SERIES

CHAPTER III—REGULATIONS RELATING TO THE RIGHTS AND PROTECTIONS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

PART H501—GENERAL PROVISIONS

Sec.
H501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
H501.101 Purpose and scope.
H501.102 Definitions.
H501.103 Coverage.
H501.104 Administrative authority.
H501.105 Effect of Interpretations of the Labor Department.
H501.106 Application of the Portal-to-Portal Act of 1947.

§ H501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the parts of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding parts of the Office of Compliance (CO) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

Part 531: Wage payments under the Fair Labor Standards Act of 1938—Part H531.

Part 541: Defining and delimiting the terms ''bona fide executive,'' ''administrative,'' and ''professional'' employees—Part H541.

Part 547 Requirements of a ''Bona fide thrift or savings plan''—Part H547.

SUBPART A—MATTERS OF GENERAL APPLICABILITY

§ H501.101 Purpose and scope.

(a) Section 203 of the Congressional Accountability Act (CAA) provides that the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. §§ 206(a)(1) & (d), 207, 212(c)) shall apply to covered employees of the legislative branch of the Federal government. Section 301 of the CAA creates the Office of Compliance as an independent office in the legislative branch for enforcing the rights and protections of the FLSA, as applied by the CAA.

(b) The FLSA as applied by the CAA provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Included also in the FLSA are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the FLSA exempts specified employees or groups of employees from the application of certain of its provisions.

(c) This chapter contains the substantive regulations with respect to the FLSA that the Board of Directors of the Office of Compliance has adopted pursuant to Sections 203(c) and 304 of the CAA, which require that the Board promulgate regulations that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of § 203 of the CAA] except insofar as the Board may determine, for good

cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

§ H501.102 Definitions.

For purposes of this chapter:

(a) CAA means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§ 1301–1438).

(b) FLSA or Act means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.).

(c) Covered employee means any employee of the House of Representatives, including an applicant for employment and a former employee.

(d) Employee of the House of Representatives includes any individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by (1) the Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment.

(e) Employing office and employer mean (1) the personal office of a Member of the House of Representatives; (2) a committee of the House of Representatives or a joint committee; or (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives.

(f) Board means the Board of Directors of the Office of Compliance.

(g) Office means the Office of Compliance.

§ H501.103 Coverage.

The coverage of Section 203 of the CAA extends to any covered employee of an employing office without regard to whether the covered employee is engaged in commerce or the production of goods for interstate commerce and without regard to size, number of employees, amount of business transacted, or other measure.

§ H501.104 Administrative authority.

(a) The Office of Compliance is authorized to administer the provisions of Section 203 of the Act with respect to any covered employee or covered employer.

(b) The Board is authorized to promulgate substantive regulations in accordance with the provisions of Sections 203(c) and 304 of the CAA.

(c) The Board may in its discretion from time to time issue interpretative statements providing guidance to employees and to employing offices on the rights and protections established under the FLSA that are made applicable by Sections 203(a) and 225 of the CAA.

§ H501.105 Effect of Interpretations of the Department of Labor.

(a) In administering the FLSA, the Wage and Hour Division of the Department of Labor has issued not only substantive regulations but also interpretative bulletins. Substantive regulations represent an exercise of statutorily-delegated lawmaking authority from the legislative branch to an administrative agency. Generally, they are proposed in accordance with the notice-and-comment procedures of the Administrative Procedure Act (APA), 5 U.S.C. § 553. Once promulgated, such regulations are considered to have the force and effect of law, unless set aside upon judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See *Batterton* v. *Francis*, 432 U.S. 416, 425 n.9 (1977). See also 29 C.F.R. § 790.17(b) (1994). Unlike substantive regulations, interpretative statements, including bulletins and other releases of the Wage and Hour Division, are not issued pursuant to the provisions of the APA and may not have the force and effect of law. Rather, they may only constitute official interpretations of the Department of Labor with respect to the meaning and application of the minimum wage, maximum hour, and overtime pay requirements of the FLSA. See 29 C.F.R. § 790.17(c) (citing Final Report of the Attorney General's Committee on Administrative Procedure, Senate Document No. 8, 77th Cong., 1st Sess., at p. 27 (1941)). The purpose of such statements is to make available in one place the interpretations of the FLSA which will guide the Secretary of Labor and the Wage and Hour Administrator in the performance of their duties unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. The Supreme Court has observed: ''[T]he rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in the consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'' *Skidmore* v. *Swift*, 323 U.S. 134, 140 (1944).

(b) Section 203(c) of the CAA provides that the substantive regulations implementing Section 203 of the CAA shall be ''the same as substantive regulations promulgated by the Secretary of Labor'' except where the Board finds, for good cause shown, that a modification would more effectively implement the rights and protections established by the FLSA. Thus, the CAA by its terms does not mandate that the Board adopt the interpretative statements of the Department of Labor or its Wage and Hour Division. The Board is thus not adopting such statements as part of its substantive regulations.

§ H501.106 Application of the Portal-to-Portal Act of 1947.

(a) Consistent with Section 225 of the CAA, the Portal to Portal Act (PPA), 29 U.S.C. §§ 216 and 251 et seq., is applicable in defining and delimiting the rights and protections of the FLSA that are prescribed by the CAA. Section 10 of the PPA, 29 U.S.C. § 259, provides in pertinent part:

[N]o employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, . . . if he pleads and proves that the act or omission complained of was in good faith in conformity with and reliance on any written administrative regulation, order, ruling, approval or interpretation of [the Administrator of the Wage and Hour Division of the Department of Labor] . . . or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) In defending any action or proceeding based on any act or omission arising out of section 203 of the CAA, an employing office may satisfy the standards set forth in subsection (a) by pleading and proving good faith reliance upon:

(1) Any written administrative regulation, order, decision, ruling, approval or interpretation, or any administrative practice or enforcement policy, of the Board.

(2) Any written administrative regulation, order, ruling, approval or interpretation, of the Administrator of the Wage and Hour Division of the Department of Labor: *Provided*, that such regulation, order, ruling, approval or interpretation had not been superseded at the time of reliance by any regulation, order, decision, ruling, approval or interpretation, or any administrative practice or enforcement policy, of the Board or the courts.

PART H531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

SUBPART A—PRELIMINARY MATTERS

Sec.
H531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
H531.1 Definitions.
H531.2 Purpose and scope.

SUBPART B—DETERMINATIONS OF ''REASONABLE COST;'' EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS

H531.3 General determinations of 'reasonable cost'.
H531.6 Effects of collective bargaining agreements.

SUBPART A—PRELIMINARY MATTERS.

§ H531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

531.1 Definitions—H531.1.

531.2 Purpose and scope—H531.2.

531.3 General determinations of ''reasonable cost''—H531.3.

531.6 Effects of collective bargaining agreements—H531.6.

§ H531.1 Definitions.

(a) *Administrator* means the Administrator of the Wage and Hour Division or his authorized representative. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 3(m) of the Act.

(b) *Act* means the Fair Labor Standards Act of 1938, as amended.

§ H531.2 Purpose and scope.

(a) Section 3(m) of the Act defines the term 'wage' to include the 'reasonable cost', as determined by the Secretary of Labor, to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. In addition, section 3(m) gives the Secretary authority to determine the 'fair value.' of such facilities on the basis of average cost to the employer or to groups of employers similarly situated, on average value to groups of employees, or other appropriate measures of 'fair value.' Whenever so determined and when applicable and pertinent, the 'fair value' of the facilities involved shall be includable as part of 'wages' instead of the actual measure of the costs of

those facilities. The section provides, however, that the cost of board, lodging, or other facilities shall not be included as part of 'wages' if excluded therefrom by a bona fide collective bargaining agreement. Section 3(m) also provides a method for determining the wage of a tipped employee.

(b) This part 531 contains any determinations made as to the 'reasonable cost' and 'fair value' of board, lodging, or other facilities having general application.

SUBPART B—DETERMINATIONS OF ''REASONABLE COST'' AND ''FAIR VALUE''; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS

§ H531.3 General determinations of 'reasonable cost.'

(a) The term *reasonable* cost as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) Reasonable cost does not include a profit to the employer or to any affiliated person.

(c) The reasonable cost to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer: *Provided*, That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term *good accounting practices* does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term *depreciation* includes obsolescence.

(d)(1) The cost of furnishing 'facilities' found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

(2) The following is a list of facilities found by the Administrator to be primarily for the benefit of convenience of the employer. The list is intended to be illustrative rather than exclusive: (i) Tools of the trade and other materials and services incidental to carrying on the employer's business; (ii) the cost of any construction by and for the employer; (iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

§ H531.6 Effects of collective bargaining agreements.

(a) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(b) A collective bargaining agreement shall be deemed to be 'bona fide' when pursuant to the provisions of section 7(b)(1) or 7(b)(2) of the FLSA it is made with the certified representative of the employees under the provisions of the CAA.

PART H541—DEFINING AND DELIMITING THE TERMS ''BONA FIDE EXECUTIVE,'' ''ADMINISTRATIVE,'' OR ''PROFESSIONAL'' CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN SECONDARY SCHOOL).

SUBPART A—GENERAL REGULATIONS.

H541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
H541.01 Application of the exemptions of section 13(a)(1) of the FLSA.
H541.1 Executive.
H541.2 Administrative.
H541.3 Professional.
H541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees.

SUBPART A—GENERAL REGULATIONS.

§ H541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations

541.1 Executive—H541.1.
541.2 Administrative—H541.2.
541.3 Professional—H541.3.
541.5b Equal pay provisions of section 6(d) of the FLSA apply to executive, administrative, and professional employees—H541.5b.

§ H541.01 Application of the exemptions of section 13 (a)(1) of the FLSA.

(a) Section 13(a)(1) of the FLSA, which provides certain exemptions for employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in a secondary school), applies to covered employees by virtue of Section 225(f)(1) of the CAA.

(b) The substantive regulations set forth in this part are promulgated under the authority of sections 203(c)and 304 of the CAA, which require that such regulations be the same as the substantive regulations promulgated by the Secretary of Labor except where the Board determines for good cause shown that modifications would be more effective for the implementation of the rights and protections of covered employees.

§ H541.1 Executive.

The term employee employed in a bona fide executive * * * capacity in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee: (a) Whose primary duty consists of the management of an employing office in which he is employed or of a customarily recognized department of subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: Provided, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the employing office in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section

§ H541.2 Administrative.

The term employee employed in a bona fide * * * administrative * * * capacity in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of either: (1) The performance of office or nonmanual work directly related to management policies or general operations of his employer or his employer's customers, or (2) The performance of functions in the administration of the Congressional Page School or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assists the head of an employing office, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or (2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or (3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities, or (2) Who, in the case of academic administrative personnel, is compensated for services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers of the Congressional Page School: Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all the requirements of this section.

§ H541.3 Professional.

The term employee employed in a bona fide * * * professional capacity in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the performance of: (1) Work requiring knowledge of

an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or (2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or (3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the Congressional Page School , or (4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $170 per week, exclusive of board, lodging or other facilities: *Provided,* That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further,* That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (3), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Provided further,* That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer- related work within the scope of paragraph (a)(4) of this section and who is compensated on an hourly basis at a rate in excess of 6 1/2 times the minimum wage provided by section 6 of the FLSA as applied by the CAA.

§ H541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees.

The FLSA, as amended and as applied by the CAA, includes within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) under section 13(a)(1) of the FLSA. Thus, for example, where an exempt administrative employee and another employee of the employing office are performing substantially ''equal work,'' the sex discrimination prohibitions of section 6(d) are applicable with respect to any wage differential between those two employees.

PART H547—REQUIREMENTS OF A ''BONA FIDE THRIFT OR SAVINGS PLAN.''

Sec.
H547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
H547.0 Scope and effect of part.
H547.1 Essential requirements of qualifications.
H547.2 Disqualifying provisions.

§ H547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

547.0 Scope and effect of part—H547.0.

547.1 Essential requirements of qualifications—H547.1.

547.2 Disqualifying provisions—H547.2.

§ H547.0 Scope and effect of part.

(a) The regulations in this part set forth the requirements of a ''bona fide thrift or savings plan'' under section 7(e)(3)(b) of the Fair Labor Standards Act of 1938, as amended (FLSA), as applied by the CAA. In determining the total remuneration for employment which section 7(e) of the FLSA requires to be included in the regular rate at which an employee is employed, it is not necessary to include any sums paid to or on behalf of such employee, in recognition of services performed by him during a given period, which are paid pursuant to a bona fide thrift or savings plan meeting the requirements set forth herein. In the formulation of these regulations due regard has been given to the factors and standards set forth in section 7(e)(3)(b) of the Act.

(b) Where a thrift or savings plan is combined in a single program (whether in one or more documents) with a plan or trust for providing old age, retirement, life, accident or health insurance or similar benefits for employees, contributions made by the employer pursuant to such thrift or savings plan may be excluded from the regular rate if the plan meets the requirements of the regulation in this part and the contributions made for the other purposes may be excluded from the regular rate if they meet the tests set forth in regulations.

§ H547.1 Essential requirements for qualifications.

(a) A ''bona fide thrift or savings plan'' for the purpose of section 7(e)(3)(b) of the FLSA as applied by the CAA is required to meet all the standards set forth in paragraphs (b) through (f) of this section and must not contain the disqualifying provisions set forth in § H547.2.

(b) The thrift or savings plan constitutes a definite program or arrangement in writing, adopted by the employer or by contract as a result of collective bargaining and communicated or made available to the employees, which is established and maintained, in good faith, for the purpose of encouraging voluntary thrift or savings by employees by providing an incentive to employees to accumulate regularly and retain cash savings for a reasonable period of time or to save through the regular purchase of public or private securities.

(c) The plan specifically shall set forth the category or categories of employees participating and the basis of their eligibility. Eligibility may not be based on such factors as hours of work, production, or efficiency of the employees: *Provided, however,* That hours of work may be used to determine eligibility of part-time or casual employees.

(d) The amount any employee may save under the plan shall be specified in the plan or determined in accordance with a definite formula specified in the plan, which formula may be based on one or more factors such as the straight-time earnings or total earnings, base rate of pay, or length of service of the employee.

(e) The employer's total contribution in any year may not exceed 15 percent of the participating employees' total earnings during that year. In addition, the employer's total contribution in any year may not exceed the total amount saved or invested by the participating employees during that year: *Provided, however,* That a plan permitting a greater contribution may be submitted to the Administrator and approved by him as a 'bona fide thrift or savings plan' within the meaning of section 7(e)(3)(b) of the Act if: (1) The plan meets all the other standards of this section; (2) The plan contains none of the disqualifying factors enumerated in § H547.2; (3) The employer's contribution is based to a substantial degree upon retention of savings; and (4) The amount of the employer's contribution bears a reasonable relationship to the amount of savings retained and the period of retention.

(f) The employer's contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employee retains his savings or investment in the plan: *Provided,* That no employee's share determined in accordance with the plan may be diminished because of any other remuneration received by him.

§ H547.2 Disqualifying provisions.

(a) No employee's participation in the plan shall be on other than a voluntary basis.

(b) No employee's wages or salary shall be dependent upon or influenced by the existence of such thrift or savings plan or the employer's contributions thereto.

(c) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan may not be based upon the employee's hours of work, production or efficiency.

PROPOSED REGULATIONS RELATING TO THE EMPLOYING OFFICES OTHER THAN THOSE OF THE SENATE AND THE HOUSE OF REPRESENTATIVES

OFFICE OF COMPLIANCE

The Congressional Accountability Act of 1995: Extension of Rights and Protections Under the Fair Labor Standards Act of 1938 (Notices of Proposed Rulemaking with respect to Interns and Irregular Work Schedules were issued on October 11. The comment period closed on November 13. Final rules will be issued separately pursuant to Section 304 of the CAA.)

Notice of proposed rulemaking

Summary: The Board of Directors of the Office of Compliance is publishing proposed

rules to implement section 203(c) of the Congressional Accountability Act of 1995 (P.L. 104–1, Stat. 10) (''CAA''). The proposed regulations, which are to be applied to the House of Representatives and employees of the employing offices, and their employees, of the Congress other than the Senate and the House of Representatives, set forth the recommendations of the Executive Director for Office of Compliance, as approved by the Board of Directors, Office of Compliance.

Dates: Comments are due within 30 days after publication of this Notice in the Congressional Record.

Addresses: Submit written comments to the Chair of the Board of Directors, Office of Compliance, Room LA 200, Library of Congress, Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 252–3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: The Executive Director, Office of Compliance at (202) 252–3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this Notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, (202) 224–2705.

Supplementary information:

I. Background

A. Introduction

The Congressional Accountability Act of 1995 (''CAA''), PL 104–1, was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 203(a) of the CAA applies the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (a)(1) and (d), 207, 212(c) (''FLSA'') to covered employees and employing offices. Section 203(c) of the CAA (2 U.S.C. Section 1313(c)) directs the Board of Directors of the Office of Compliance established under the CAA to issue regulations to implement the section. Section 203(c)(2) (2 U.S.C. Section 1313(c)(2)) further states that such regulations, with the exception of certain irregular work schedule regulations to be issued under section 203(a)(3), ''shall be the same as substantive regulations issued by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

B. Advance notice of proposed rulemaking

On September 28, 1995, the Board of the Office of Compliance issued an Advance Notice of Proposed Rulemaking (''ANPRM'') soliciting comments from interested parties in order to obtain participation and information early in the rulemaking process. 141 Cong. R. S14542 (daily ed., Sept. 28, 1995). In addition to inviting comment on specific questions arising under five of the statutes made applicable by the CAA in the ANPRM, the Board and the statutory appointees of the Office sought consultation with the Chair of the Administrative Conference of the United States, the Secretary of Labor and the Director of the Office of Personnel Management with regard to the development of these regulations in accordance with section 304(g) of the CAA. The Office has also consulted with interested parties to further its understanding of the need for and content of appropriate regulations. Based on the information gleaned from these consultations and the comments on the ANPRM, the Board of Directors of the Office of Compliance is publishing these proposed rules, pursuant to Section 203(c)(1) of the CAA (2 U.S.C. Section 1313(c)(1)).

1. Modification of the regulations of the Department of Labor

In the ANPRM, the Board asked the question, ''Whether and to what extent should the Board modify the Secretary's Regulations?'' The Board received 15 comments on the ANPRM: two from Senators, four from House Members (one from the leadership of the Committee with primary jurisdiction for the CAA and one from three of the sponsors of the CAA), one from the Secretary of the Senate and three from House offices (two from institutional offices and one from a Member's Chief of Staff), four from business coalitions or associations representing an array of private employers, and one from a labor organization.

Those commenters who expressed views on the ANPRM cited both the statute and the legislative history in taking the position that the CAA presumes that the regulations of the Department of Labor should not be modified. Illustrative comments included the following:

''[Section 304 of the CAA] evidences clear legislative intent that the Board apply these rights and protections to Congressional employees in a manner comparable to and consistent with the rights and protections applicable to employees in the private sector under regulations adopted by the Secretary (DOL). . . . The [CAA] requires that the regulations issued by the Board be the same as those issued by DOL unless the Board determines that modification would more effectively implement the rights and protections of the laws made applicable under the [CAA].''

''[I]f a law is right for the private sector, it is right for Congress; . . . . Consistent with [this] principle, we would urge the Office not to deviate (except in those few areas where expressly authorized by the CAA) from applying the laws in the same manner in which they are applied to the private sector.

* * * * *

[W]e have not identified any situations in which modifications [of the DOL regulations] would be appropriate.''

''There are no circumstances that justify 'good cause' for adopting regulations that deviate from those currently applied to private sector employers.''

''[Section 203(c)(2)] confers on the Office of Compliance only very limited authority to deviate from the present DOL regulations. The legislative history to the 'good cause' exception likewise makes clear that this authority is to be used by the Office of Compliance sparingly.''

* * * * *

''The legislative history of the CAA demands that the Office of Compliance apply to Congress the same regulations as those imposed on the private sector.''

''[W]e urge the Board to refrain from modifying regulations promulgated by the Department of Labor and other Executive agencies. Use of established regulations will provide the Board, employees and employing offices with a body of instructive case law and interpretive documents.''

''While the Office serves an important implementation and enforcement role, it must not place itself in the position of shielding Congress from substantive requirements imposed on private businesses.''

Based on the comments and the Board's understanding of the law and the institutions to which it is being made applicable, the Board is issuing the Secretary's regulations with only these limited modifications: Technical changes in the nomenclature and deletion of those sections clearly inapplicable to the legislative branch.

2. Notice Posting and Recordkeeping

The ANPRM also invited comment on whether the recordkeeping and notice posting requirements of the various laws made applicable by the CAA are incorporated as statutory requirements of the CAA. The ANPRM inquired whether, if such requirements were not incorporated, could and should the Board develop its own requirements pursuant to its ''good cause'' authority. The ANPRM also invited comment on proposing guidelines and models for recordkeeping and notice posting.

Commenters were in agreement that recordkeeping and notice posting are important to the effective implementation of several of the statutes incorporated in the CAA. However, opinions as to whether the Board should require notice posting and recordkeeping were widely divergent. Several commenters expressed the view that the Board lacks the statutory authority to adopt notice posting and recordkeeping requirements and that the notice posting and recordkeeping requirements of the FLSA do not apply to Congress. Other commenters expressed the view that the Board has the authority to issue regulations to impose recordkeeping and notice posting requirements and that such regulations should be, in substance, the same as those with which the private sector must comply.

The Board agrees with those commenters who took the position that, if employing offices are to be treated the same as private sector employers are treated under FLSA, they should have to comply with the statute's notice posting and recordkeeping requirements. Moreover, the Board notes that notice posting and recordkeeping promote the full and effective enforcement of these incorporated rights and protections. In the Board's view, notice posting and recordkeeping may well be in employers' interests both as a sound personnel practice and in order to defend against subsequent litigation.

But while the CAA incorporates certain specific sections of the FLSA, the CAA explicitly did not incorporate the notice posting and recordkeeping requirements of Section 11, 29 U.S.C. §211 of the FLSA. Because the Board's authority to modify the Secretary's regulations for ''good cause'' does not authorize it to adopt regulatory requirements that are the equivalent of statutory requirements that Congress has omitted from the CAA, the Board has determined that it may not impose such requirements on employing offices. However, as various commenters suggest, the Board will provide guidance to employing offices concerning model recordkeeping practices as part of carrying out its program of education under section 301(h)of the CAA (2 U.S.C. 1381(h)).

The Board would also note that based upon their collective years of experience representing employers and employees with regard to various labor and employment laws, including the FLSA, the absence of recordkeeping and notice posting requirements may create a void which can only partially be filled by the program of education to be carried out by the Board pursuant to Section

301(h)(1) and the optional notice which will be distributed by the Board pursuant to Section 301(h)(2). The Board also would emphasize that employees will in many circumstances be able to establish a prima facie case simply by their own testimony estimating the hours worked by the employees where the employing office has failed to maintain adequate, accurate records. An employing office may find that its ability to respond to an employee's prima facie case is substantially burdened by its failure to keep accurate payroll and time-records. If Congress wishes to experience the same burdens as faced by the private sector and also to address these issues, it should enact recordkeeping requirements comparable to those of the FLSA. (Of course, like the regulations under those statutes, such recordkeeping requirements may leave to the discretion of each employing office the precise form and manner in which records will be kept.) But, in light of the text and structure of the CAA, the Board believes that it is up to Congress to decide whether to do so.

II. The proposed regulations

A. Background

Congress committed enforcement of the Fair Labor Standards Act of 1938 to the Department of Labor and its Wage and Hour Division, whose regulations and interpretations of that Act comprise almost one thousand pages of Chapter V, Title 29 of the Code of Federal Regulations. In enacting the CAA, however, Congress expressly refused to commit enforcement to the executive branch of the Federal government nor did Congress bring its employing offices under the FLSA itself. Instead, Congress carefully specified, through sectional references to the FLSA, the substantive rights and protections afforded to legislative employees, and precisely mandated procedures by which those rights and protections would be largely enforced by a new and independent office in the legislative branch, the Office of Compliance. Further, in granting the Board rulemaking authority with respect to the FLSA in Section 203(c)(1) of the CAA, Congress affirmatively commanded the Board to issue substantive regulations, with the important directive that they ''shall be the same as substantive regulations promulgated by the Secretary of Labor * * * except as the Board may determine, for good cause shown * * * that a modification of such regulations would be more effective for the implementation of rights and protections under'' the CAA.

In the Board's view, and notwithstanding what has been urged by some of the commenters, this unusual statutory framework neither mandates nor allows an uncritical, wholesale incorporation of all the regulations and interpretive statements issued by the Labor Department under the FLSA. Rather, this statutory framework requires the Board to cull from the vast body of FLSA material found in the Code of Regulations only those items that constitute ''substantive regulations'' as the term is understood under settled principles of administrative law. (See *Batterton* v. *Francis*, 422 U.S. 416, 425, n. 9 (1977)). Moreover, the statutory framework authorizes the Board to delete those substantive regulations that either have no application in the employing offices of the Congress or that are not likely to be invoked. For these reasons, the Board is not proposing their adoption, unless public comments establish a justification to the contrary. Finally, by limiting itself to substantive regulations, the Board is not adopting those portions of 29 C.F.R. chapter V that constitute the interpretative bulletins or statements of the Department of Labor and its Wage and Hour Division.

B. Proposed regulations

1. General provisions

The proposed regulations include an initial Part 501 which contains matters of general applicability including the purpose and scope of the regulations, definitions, coverage, and the administrative authority of the Board and the Office of Compliance. In addition, a section explains the effect of interpretative bulletins and statements of the Department of Labor, and another section provides for the application of the Portal to Portal Act. These latter sections are discussed below.

It is noted that the definition section incorporates the general provisions of section 101 of the CAA which defines ''employee,'' ''covered employee,'' ''employing office,'' and ''employee of the House of Representatives.'' Section 203 of the CAA, which applies the rights and protections of the FLSA, also contemplates the promulgation of a definitional regulation that excludes ''interns'' from the meaning of ''covered employee.'' The Board, in a separate NPRM issued on October 11, 1995, proposed such a regulation, together with a regulation governing irregular work schedules and the receipt of compensatory time in lieu of overtime compensation. The Board is reviewing the public comments received in response to that NPRM and will issue a separate final rule on those issues.

It should be noted that section 225(f)(1) of the CAA provides that, except where inconsistent with definitions of the CAA itself, the definitions in the laws made applicable by the CAA shall also apply under the CAA. Thus, attention must be paid to those definitions found in the FLSA that are consistent with the CAA even if they are not expressly incorporated in the proposed regulations. In this regard, one commenter expressed concern over whether employing offices would be obligated to pay minimum wages and overtime compensation to individuals who do volunteer work, in light of the fact that under the FLSA ''employee'' may include certain volunteers. See 29 U.S.C. § 203(e)(4)(A), which excludes from the definition of ''employee'' only certain volunteers who perform work for a State, political subdivision, or interstate governmental agency. Similarly, it is noted that, in enacting the CAA, Congress did make separate provision for excluding interns. Thus, the Board has concluded that, to the extent that volunteer activity would bring an individual under the coverage of the FLSA, similarly situated individuals would be treated in the same manner under the CAA.

2. Provisions derived from regulations of the Department of Labor

Those regulations of the Department of Labor that are being adopted in substance include:

Part 531, which governs the manner in which an employee's wages are calculated taking into account the reasonable cost to an employer of furnishing board, lodging, or other facilities. This Part is derived from Section 3(m) of the FLSA, which directs how the ''wage'' paid to an employee is determined. Section 3(m) must be treated as applicable under the CAA by virtue of Section 225(f)(1), which authorizes generally the inclusion of those definitions and exemptions that are consistent with definitions and exemptions of the CAA. However, it is noted that section 3(m) is inconsistent with the CAA insofar as the implementing regulations in Part 531, Title 29, C.F.R., provide procedures by which the Wage and Hour Administrator makes determinations in specific cases with respect to the furnishing of board, lodging, or other facilities. Because the Administrator has no role in the enforcement of the CAA by reason of Section 225(f)(3), and because the Board is not at this time is not authorizing the Office of Compliance to make such specific determinations, the Board proposes to delete the provisions setting forth those procedures. Similarly, the reference to ''tipped employees'' and the method by which their wages are determined are deleted because the applicable sections assign responsibility to the Administrator.

Part 541, which defines and delimits the bona fide executive, administrative, and professional employees who are exempt under Section 13(a) of the FLSA from the minimum wage and maximum hours requirements. The Board has determined that this exemption, commonly known as the ''white collar'' exemption, is applicable to employing offices of Congress by virtue of Section 225(f)(1) of the CAA.

In the ANPRM, the Board solicited public comment on whether and to what extent it should modify the Labor Department's regulations regarding this exemption. Generally, the commenters did not question the applicability of this exemption to covered employees under the CAA, and several commenters urged the adoption of all of the Department's regulations in Part 541, 29 C.F.R., including the interpretative bulletins, without any modification. Two commenters contended that the Board's regulations should grant a sweeping exemption for nearly all staff employees working in elected members' offices because they exercise independent judgment and discretion in performing their responsibilities.

Other commenters urged the Board to modify the Labor Department regulations to take into account the unique job responsibilities of staff working for an elected member either in a personal office, in a leadership office or on committee. Recognizing that job titles alone cannot be dispositive of who is an exempt employee, these commenters urged the Board to identify with particularity those job duties which, if performed by an employee, would render him or her an exempt executive, administrative, or professional employee.

The Board is proposing to adopt the Labor Department's substantive regulations contained in Subpart A of Part 541 of 29 C.F.R. that set forth the fundamental criteria for satisfying each of the three exemptions. But, for the reasons explained below, the Board is not formally adopting the interpretative bulletins contained in Subpart B of Part 541 of 29 C.F.R., which discuss and illustrate through examples the Department's understanding of the exemption criteria.

With respect to some commenters' request that the Board modify the white collar exemptions, upon reflection, the Board has reluctantly concluded that such a modification would not satisfy the ''good cause'' requirement of Section 203(c)(2) of the CAA. The Board recognizes that the Secretary's regulations and interpretations were promulgated in a different era, with different employment paradigms in mind. Thus, the Board appreciates the many difficulties that employing offices will have in interpreting and reconciling these regulations to present day realities. Moreover, the Board is mindful of the significant impact the application of the administrative, executive and professional exemption will have on the structuring, functioning and expense of the Members' and Senators' personal offices and committee offices. However, the Board notes that private sector and state and local government employers face the same difficulties. And the Board has not found any sound, principled basis for modifying the exemption

regulation for Congress and its instrumentalities. That resolved, the Board nonetheless wishes to make clear its intent to provide, as time and resources permit, appropriate general guidance to the Congress and its instrumentalities on how to identify and justify which employees are exempt. Such efforts made through the Office's education and information programs, will attempt to assist employing offices in determining which job duties will be considered exempt under the executive, administration or professional criteria.

Part 547, which defines, pursuant to Section 7(e)(3)(b) the standard that bona fide thrift or savings plans must meet in order not to be included within an employee's regular rate of pay for purposes of calculating overtime obligations under Section 7 of the FLSA. This is included in light of Section 203(a)1) of the CAA, which specifically applied the rights and protections of Section 7 of the FLSA.

Part 570, which sets forth the limitations on the use of child labor. This Part implements Section 12(c) of the FLSA, prohibiting oppressive child labor, as defined by Section 3(l) of the same Act. The former section is specifically referenced in Section 203(a)(1) of the CAA, while the latter must be referenced by reason of Section 225(f)(1) of the CAA. The inclusion of this Part in the separate regulations of the Senate is necessitated by the fact that the Senate allows for the appointment of congressional pages below the age of 16, unlike the House of Representatives, which by law sets a minimum age of 16 for such employees. For children under age 16, the FLSA regulations impose limitations on hours worked during the school year. Part 570 is also included in the separate regulations applicable to all other covered employees and employing offices. Given the hazardous nature of some of the activities of the support functions, such as maintenance and repair, Part 570 regulations are being proposed in the event that such instrumentalities employ children under 18 years of age. It is noted that the Board has not adopted regulations comparable to those set forth in the Labor Department's Subpart B (29 C.F.R. Sections 570.5-.27), authorizing the issuance of certificates of age. In addition, with respect to Section 570.52, governing the hazardous occupation of motor-vehicle driver and outside helper, the Board is not adopting the special exemption for school bus driving because by its terms no employing offices would satisfy the criteria of the regulation.

C. Secretary of Labor's regulations that the Board proposes not to adopt

In reviewing the remaining parts of the Labor Department's regulations, it is readily apparent that some have no application to the employing offices within the legislative branch. For this reason, the Board is not including them within its substantive regulations. Among the excluded regulations are: Part 510, which pertains to the application of the minimum wage provisions to Puerto Rico; Part 511, establishing a wage order procedure for American Samoa; Part 515, authorizing the utilization of State government agencies for investigations and inspections; Part 530, governing the employment of industrial homeworkers in certain industries; Part 549, defining the requirements of a ''bona fide profit-sharing plan or trust;'' Part 550, defining the term ''talent fees;'' Part 552, regulating the application of the FLSA to domestic service; Part 575, addressing child labor in certain agricultural employment; Parts 578, 579, and 580, implementing the civil money penalties provisions of the FLSA; and Part 679, dealing with industries in American Samoa. Unless public comments suggest otherwise, the Board intends including in the adopted regulations a provision stating that the Board has issued regulations on all matters for which the CAA requires a regulation. See Section 411 of the CAA.

Other substantive regulations could have application in the event that an employing office wished to avail itself of certain special wage rates, subminimum wage exemptions or overtime exemptions under the FLSA. These are found in: Parts 519-528, which authorize subminimum wages for full-time students, student-learners, apprentices, learners, messengers, workers with disabilities, and student workers; Part 548, which authorizes in the collective bargaining context the establishment of basic wage rates for overtime compensation purposes; and Part 551, which implements an overtime exemption for local delivery drivers and helpers. Unless public comments provide a sufficient justification to the contrary the Board is not proposing the adoption of regulations covering the foregoing subjects.

III. The Interpretive Bulletins and other relevant guidance

In addition to the substantive regulations found in Subchapter A, the Department of Labor has issued, under Subchapter B, ''Statements of General Policy or Interpretations Not Directly Related to Regulations.'' 29 C.F.R Parts 775-794. Usually called Interpretive Bulletins, these statements make available in one place the official interpretations which guide the Secretary of Labor and the Wage and Hour Administrator in the performance of their duties. As the interpretations of an administering agency, such statements are usually given some deference by the courts. As the Supreme Court has observed:

''the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in the consideration, the validity of its reasoning its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'' *Skidmore* v. *Swift*, 323 U.S. 134, 140 (1944).

However, unlike ''substantive regulations,'' these interpretations are not issued by the agency pursuant to its statutory authority to implement the statute and, more significantly, do not have the force and effect of law. See *Batterton* v. *Francis*, 432 U.S. 416, 425 n.9 (1977). The Board's mandate is only to issue substantive regulations that are ''the same as the substantive regulations of the Secretary of Labor to implement the statutory provision [of the FLSA] applied'' by Section 204(a) of the CAA unless modified for good cause (CAA Section 203 (c)(2)). Therefore, the Board, does not propose to adopt the non-substantive interpretations of the DOL and its Wage and Hour Division as substantive regulations under the CAA. Moreover, the Board is not proposing to issue the Department's interpretations as its own interpretations of the FLSA rights and protections made applicable under the CAA at this time. However, as discussed below, employing offices should be advised that, pursuant to the Portal to Portal Act, the Board will give due consideration the Secretary's interpretations of the FLSA.

Application of the Portal to Portal Act.—The Portal to Portal Act, 61 Stat. 84 (1947), codified generally at 29 U.S.C. Sections 216 and 251, et seq. (''PPA''), contains provisions which affect the rights and liabilities of employees and employers with regard to alleged underpayment of minimum or overtime wages under the FLSA. Section 4 of the PPA excludes from the definition of hours worked both activities preliminary to or postliminary to the worker's principal activities and travel time absent a contract, custom or practice to the contrary. 29 U.S.C. Section 254. Sections 9 and 10 of the PPA provide the employer with a defense against liability or punishment in any action or proceeding brought against it for failure to comply with the minimum wage and overtime provisions of the FLSA, where the employer pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy of the Wage and Hour Administrator of the Department of Labor. 29 U.S.C. Sections 258–259. The PPA also contains provisions which restrict and limit employee suits under section 16(b) of the FLSA. For example, section 11 of the PPA provides that in any action brought under section 216 of the FLSA, the court may in its discretion, subject to prescribed conditions, award no liquidated damages or award any amount of such damages not to exceed the amount specified in section 16(b) of the FLSA. 29 U.S.C. Section 260.

The Board has determined that the above provisions of the PPA are incorporated into section 203 of the CAA, either as an amendment to section 16(b) of the FLSA (which is expressly applied to the legislative branch under section 203(b) of the CAA), or by virtue of section 225(f) of the CAA, which applies the definitions and exemptions of the FLSA to the extent not inconsistent with the CAA. To that end, the Board will give due consideration to the interpretations of the FLSA of the Secretary of Labor. Moreover, employing offices may utilize these interpretations in attempting to understand the rights and protections under the FLSA that have been made applicable by the CAA. Unless and until the Secretary's interpretive statements are superseded or interpretative guidance or decisions to the contrary are issued by the Board or the courts, they may be relied upon for purposes of defending against claims brought under the CAA to the same extent as private sector employers may properly rely upon them in actions brought under the FLSA.

Joint employer doctrine.—The Board solicited comments in the ANPRM on whether and to what extent the joint employment doctrine as developed under the FLSA is applicable under the CAA. The comments generally advocated adoption of the doctrine to employing offices of the Congress. However, since the issue of joint employment is addressed through a DOL interpretive bulletin set forth in Part 791, 29 C.F.R., rather than a substantive regulation, the Board is not adopting it as such nor issuing it as its own interpretive statement. See discussion at Section III.

Equal Pay Act.—With respect to the Equal Pay Act (EPA), which is included in Section 6(d) of the FLSA, 29 U.S.C. Section 206(d), the Secretary of Labor promulgated interpretative regulations that were originally included in 29 C.F.R. Part 800. Pursuant to the provisions of Reorganization Plan No. 1 of 1978, as confirmed by the Congress in Public Law 98–532, 98 Stat. 2705 (1984), enforcement and administration of the EPA was transferred from the Secretary of Labor to the Equal Employment Opportunity Commission (EEOC). The EEOC promulgated its own interpretations implementing the EPA at 29 C.F.R. Part 1620. Thereafter, the Secretary deleted its interpretations. 52 FR 2517 (Jan.

23, 1987). Thus, there are no substantive regulations implementing the EPA. Under the rationale previously stated regarding the Portal to Portal Act, the Board declines to incorporate the EEOC interpretations as substantive regulations under the CAA but will recognize them as is appropriate.

Opinion Letters.—Commenters asked that the Board consider establishing a process under which the Office or the Board would issue opinion letters and upon which employing offices could rely, similar to the procedure followed by the Wage and Hour Administrator in sometimes providing such opinions at the request of private sector employers. The Board understands employing offices' desire for guidance and clarity regarding their obligations under the CAA.

To the extent that the Board itself can address issues through regulations or interpretations, it will do so. Moreover, the Office intends to provide appropriate education and technical assistance as part of its education and information responsibilities. But for the reasons stated here, the Board and the Office's ability to do so is limited by legal, resource and policy considerations. As is the case in the private sector context, many issues under these statutes can only be definitively resolved through case-by-case adjudication on particular facts. Moreover, except in the context of statutes subject to the Portal to Portal Act, it is doubtful that the Board or the Office has the statutory authority to issue guidance with legal effect (outside of the adjudicatory or rulemaking contexts); we are not aware of any such legal authorization for Executive Branch agencies to do so in the context of applying these same laws to the private sector. Further, the resources of the Board and the Office are limited: the first year appropriation is for $2.5 million. These resources are substantially less than those available to analogous Executive Branch agencies that administer fewer laws. Finally, public comment has not provided the Board with the facts necessary for yet making any of these determinations—and a detailed evidentiary record is necessary for such judgment to be made. In short, particularly in light of the various statutory responsibilities of the Office and the Board, it is not possible to give answers with legal effect to each individual request for information and guidance. While the Board will structure education and information programs to assist employees and employing offices, it is forced to respond that, like private employers, employing offices will generally have to rely on their own counsel and human resource advisors in determining their compliance with the Congressional Accountability Act.

IV. Method of approval

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 21st day of November, 1995.

GLEN D. NAGER,
Chair of the Board, Office of Compliance.

SUBTITLE C—REGULATIONS RELATING TO THE EMPLOYING OFFICES OTHER THAN THOSE OF THE SENATE AND THE HOUSE OF REPRESENTATIVES—C SERIES

CHAPTER III—REGULATIONS RELATING TO THE RIGHTS AND PROTECTIONS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

PART C501—GENERAL PROVISIONS

Sec.
C501.00 Coresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C501.001 Purpose and scope.
C501.002 Definitions.
C501.003 Coverage.
C501.004 Administrative authority.
C501.005 Effect of Interpretations of the Labor Department.
C501.006 Application of the Portal-to-Portal Act of 1947.

§ C501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the parts of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding parts of the Office of Compliance (CO) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

Part 531 Wage payments under the Fair Labor Standards Act of 1938—Part C531.

Part 541 Defining and delimiting the terms ''bona fide executive,'' ''administrative,'' and ''professional'' employees—Part C541.

Part 547 Requirements of a ''Bona fide thrift or savings plan''—Part C547.

Part 570 Child labor—Part C570.

SUBPART A—MATTERS OF GENERAL APPLICABILITY

§ C501.101 Purpose and scope.

(a) Section 203 of the Congressional Accountability Act (CAA) provides that the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. §§206(a)(1) & (d), 207.212(c)) shall apply to covered employees of the legislative branch of the Federal government. Section 301 of the CAA creates the Office of Compliance as an independent office in the legislative branch for enforcing the rights and protections of the FLSE, as applied by the CAA.

(b) The FLSA as applied by the CAA provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Included also in the FLSA are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the FLSA exempts specified employees or groups of employees from the application of certain of its provisions.

(c) This chapter contains the substantive regulations with respect to the FLSA that the Board of Directors of the Office of Compliance has adopted pursuant to Sections 203(c) and 304 of the CAA, which requires that the Board promulgate regulations that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of §203 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

§ C501.102 Definitions.

For purposes of this chapter.

(c) *CAA* means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) *FLSA* or *Act* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201 et seq.).

(c) *Covered employee* means any employee, including an applicant for employment and a former employee, of the (1) the Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment.

(d) (1) *Employee of the Office of the Architect of the Capitol* includes any employee of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants;(2) *Employee of the Capitol Police* includes any member or officer of the Capitol Police.

(e) *Employing office* and *employer* mean (1) the Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment.

(f) *Board* means the Board of Directors of the Office of Compliance.

(g) *Office* means the Office of Compliance.

§ C501.103 Coverage.

The coverage of Section 203 of the CAA extends to any covered employee of an employing office without regard to whether the covered employee is engaged in commerce or the production of goods for interstate commerce and without regard to size, number of employees, amount of business transacted, or other measure.

§ C501.104 Administrative authority.

(a) The Office of Compliance is authorized to administer the provisions of Section 203 of the Act with respect to any covered employee or covered employer.

(b) The Board is authorized to promulgate substantive regulations in accordance with the provisions of Sections 203(c) and 304 of the CAA.

(c) The Board may in its discretion from time to time issue interpretative statements providing guidance to employees and to employing offices on the rights and protections established under the FLSA that are made applicable by Sections 203(a) and 225 of the CAA.

§ C501.105 Effect of interpretations of the Department of Labor.

(a) In administering the FLSA, the Wage and Hour Division of the Department of Labor has issued not only substantive regulations but also interpretative bulletins. Substantive regulations represent an exercise of statutorily-delegated lawmaking authority from the legislative branch to an administrative agency. Generally, they are proposed in accordance with the notice-and-comment procedures of the Administrative Procedure Act (APA), 5 U.S.C. §553. Once promulgated, such regulations are considered to have the force and effect of law, unless set aside upon judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See *Batterton* v. *Francis*, 432 U.S. 416, 425 n.9 (1977). See also 29 C.F.R. §790.17(b) (1994). Unlike substantive regulations, interpretative statements, including bulletins and other releases of the Wage and Hour Division, are not issued pursuant to the provisions of the APA and may not have the force and effect of law. Rather, they may only constitute official interpretations of the Department of Labor with respect to the meaning and application of the minimum wage, maximum hour, and overtime pay requirements of the

FLSA. See 29 C.F.R. §790.17(c) (citing Final Report of the Attorney General's Committee on Administrative Procedure, Senate Document No.8, 77th Cong., 1st Sess., at p. 27 (1941)). The purpose of such statements is to make available in one place the interpretations of the FLSA which will guide the Secretary of Labor and the Wage and Hour Administrator in the performance of their duties unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. The Supreme Court has observed: ''[T]he rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in the consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'' *Skidmore* v. *Swift,* 323 U.S. 134, 140 (1944).

(b) Section 203(c) of the CAA provides that the substantive regulations implementing Section 203 of the CAA shall be ''the same as substantive regulations promulgated by the Secretary of Labor'' except where the Board finds, for good cause shown, that a modification would more effectively implement the rights and protections established by the FLSA. Thus, the CAA by its terms does not mandate that the Board adopt the interpretative statements of the Department of Labor or its Wage and Hour Division. The Board is thus not adopting such statements as part of its substantive regulations.

§ C501.106 Application of the Portal-to-Portal Act of 1947.

(a) Consistent with Section 225 of the CAA, the Portal to Portal Act (PPA), 29 U.S.C. §§216 and 251 et seq., is applicable in defining and delimiting the rights and protections of the FLSA that are prescribed by the CAA. Section 10 of the PPA, 29 U.S.C. §259, provides in pertinent part:

[N]o employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, . . . if he pleads and proves that the act or omission complained of was in good faith in conformity with and reliance on any written administrative regulation, order, ruling, approval or interpretation of [the Administrator of the Wage and Hour Division of the Department of Labor] . . . or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) In defending any action or proceeding based on any act or omission arising out of section 203 of the CAA, an employing office may satisfy the standards set forth in subsection (a) by pleading and proving good faith reliance upon:

(1) Any written administrative regulation, order, decision, ruling, approval or interpretation, or any administrative practice or enforcement policy, of the Board.

(2) Any written administrative regulation, order, ruling, approval or interpretation, of the Administrator of the Wage and Hour Division of the Department of Labor: *Provided,* that such regulation, order, ruling approval or interpretation had not been superseded at the time of reliance by any regulation, order, decision, ruling, approval or interpretation, or any administrative practice or enforcement policy, of the Board or the courts.

PART H531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

SUBPART A—PRELIMINARY MATTERS

Sec.
C531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C531.1 Definitions.
C531.2 Purpose and scope.

SUBPART B—DETERMINATIONS OF ''REASONABLE COST AND ''FAIR VALUE''; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS

C531.3 General determinations of 'reasonable cost'.
C531.6 Effects of collective bargaining agreements.

SUBPART A—PRELIMINARY MATTERS.

§ C531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

531.1 Definitions—C531.1.

531.2 Purpose and scope—C531.2.

531.3 General determinations of ''reasonable cost''—C531.3.

531.6 Effects of collective bargaining agreements—C531.6.

§ C531.1 Definitions.

(a) *Administrator* means the Administrator of the Wage and Hour Division or his authorized representative. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 3(m) of the Act.

(b) *Act* means the Fair Labor Standards Act of 1938, as amended.

§ C531.2 Purpose and scope.

(a) Section 3(m) of the Act defines the term 'wage' to include the 'reasonable cost', as determined by the Secretary of Labor, to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. In addition, section 3(m) gives the Secretary authority to determine the 'fair value.' of such facilities on the basis of average cost to the employer or to groups of employers similarly situated, on average value to groups of employees, or other appropriate measures of 'fair value.' Whenever so determined and when applicable and pertinent, the 'fair value' of the facilities involved shall be includable as part of 'wages' instead of the actual measure of the costs of those facilities. The section provides, however, that the cost of board, lodging, or other facilities shall not be included as part of 'wages' if excluded therefrom by a bona fide collective bargaining agreement. Section 3(m) also provides a method for determining the wage of a tipped employee.

(b) This part 531 contains any determinations made as to the 'reasonable cost' and 'fair value' of board, lodging, or other facilities having general application.

SUBPART B—DETERMINATIONS OF ''REASONABLE COST'' AND ''FAIR VALUE''; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS

§ C531.3 General determinations of 'reasonable cost.'

(a) The term *reasonable cost* as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) Reasonable cost does not include a profit to the employer or to any affiliated person.

(c) The reasonable cost to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5 1/2 percent) for interest on the depreciated amount of capital invested by the employer: *Provided,* That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term good accounting practices does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term depreciation includes obsolescence.

(d)(1) The cost of furnishing 'facilities' found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

(2) The following is a list of facilities found by the Administrator to be primarily for the benefit of convenience of the employer. The list is intended to be illustrative rather than exclusive: (i) Tools of the trade and other materials and services incidental to carrying on the employer's business; (ii) the cost of any construction by and for the employer; (iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

§ C531.6 Effects of collective bargaining agreements.

(a) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(b) A collective bargaining agreement shall be deemed to be 'bona fide' when pursuant to the provisions of section 7(b)(1) or 7(b)(2) of the FLSA it is made with the certified representative of the employees under the provisions of the CAA.

PART C541—DEFINING AND DELIMITING THE TERMS ''BONA FIDE EXECUTIVE,'' ''ADMINISTRATIVE,'' OR ''PROFESSIONAL'' CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN SECONDARY SCHOOL)

SUBPART A—GENERAL REGULATIONS

Sec.
C541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C541.01 Application of the exemptions of section 13(a)(1) of the FLSA.
C541.1 Executive.
C541.2 Administrative.
C541.3 Professional.
C541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees.

SUBPART A—GENERAL REGULATIONS

§ C541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

541.1 Executive—C541.1.
541.2 Administrative—C541.2.
541.3 Professional—C541.3.
541.5b Equal pay provisions of section 6(d) of the FLSA apply to executive, administrative, and professional employees—C541.5b.

§ C541.01 Application of the exemptions of section 13 (a)(1) of the FLSA.

(a) Section 13(a)(1) of the FLSA, which provides certain exemptions for employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in a secondary school), applies to covered employees by virtue of Section 225(f)(1) of the CAA.

(b) The substantive regulations set forth in this part are promulgated under the authority of sections 203(c)and 304 of the CAA, which require that such regulations be the same as the substantive regulations promulgated by the Secretary of Labor except where the Board determines for good cause shown that modifications would be more effective for the implementation of the rights and protections of covered employees.

§ C541.1 Executive.

The term employee employed in a bona fide executive * * * capacity in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the management of an employing office in which he is employed or of a customarily recognized department of subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the employing office in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

§ C541.2 Administrative.

The term employee employed in a bona fide * * * administrative ** * capacity in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of either:

(1) The performance of office or nonmanual work directly related to management policies or general operations of his employer or his employer's customers, or

(2) The performance of functions in the administration of the Congressional Page School or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assists the head of an employing office, or anemployee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers of the Congressional Page School: *Provided*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all the requirements of this section.

§ C541.3 Professional.

The term employee employed in a bona fide * * * professional capacity in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the performance of:

(1) Work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

(3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the Congressional Page School , or

(4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $170 per week, exclusive of board, lodging or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (3), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Provided further*, That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(4) of this section and who is compensated on an hourly basis at a rate in excess of 6 1/2 times the minimum wage provided by section 6 of the FLSA as applied by the CAA.

§ C541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees.

The FLSA, as amended and as applied by the CAA, includes within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) under section 13(a)(1) of the FLSA. Thus, for example, where an exempt administrative employee and another employee of the employing office are performing substantially ''equal work,'' the sex discrimination prohibitions of section 6(d) are applicable with respect to any wage differential between those two employees.

PART C547—REQUIREMENTS OF A ''BONA FIDE THRIFT OR SAVINGS PLAN''

Sec.
C547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C547.0 Scope and effect of part.
C547.1 Essential requirements of qualifications.
C547.2 Disqualifying provisions.

§ C547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations—OC Regulations.

547.0 Scope and effect of part—C547.0

547.1 Essential requirements of qualifications—C547.1

547.2 Disqualifying provisions—C547.2.

§ C547.0 Scope and effect of part.

(a) The regulations in this part set forth the requirements of a ''bona fide thrift or savings plan'' under section 7(e)(3)(b) of the Fair Labor Standards Act of 1938, as amended (FLSA), as applied by the CAA. In determining the total remuneration for employment which section 7(e) of the FLSA requires to be included in the regular rate at which an employee is employed, it is not necessary to include any sums paid to or on behalf of such employee, in recognition of services performed by him during a given period, which are paid pursuant to a bona fide thrift or savings plan meeting the requirements set forth herein. In the formulation of these regulations due regard has been given to the factors and standards set forth in section 7(e)(3)(b) of the Act.

(b) Where a thrift or savings plan is combined in a single program (whether in one or more documents) with a plan or trust for providing old age, retirement, life, accident or health insurance or similar benefits for employees, contributions made by the employer pursuant to such thrift or savings plan may be excluded from the regular rate if the plan meets the requirements of the regulation in this part and the contributions made for the other purposes may be excluded from the regular rate if they meet the tests set forth in regulations.

§ C547.1 Essential requirements for qualifications.

(a) A ''bona fide thrift or savings plan'' for the purpose of section 7(e)(3)(b) of the FLSA as applied by the CAA is required to meet all the standards set forth in paragraphs (b) through (f) of this section and must not contain the disqualifying provisions set forth in § 547.2.

(b) The thrift or savings plan constitutes a definite program or arrangement in writing, adopted by the employer or by contract as a result of collective bargaining and communicated or made available to the employees, which is established and maintained, in good faith, for the purpose of encouraging voluntary thrift or savings by employees by providing an incentive to employees to accumulate regularly and retain cash savings for a reasonable period of time or to save through the regular purchase of public or private securities.

(c) The plan specifically shall set forth the category or categories of employees participating and the basis of their eligibility. Eligibility may not be based on such factors as hours of work, production, or efficiency of the employees: *Provided, however*, That hours of work may be used to determine eligibility of part-time or casual employees.

(d) The amount any employee may save under the plan shall be specified in the plan or determined in accordance with a definite formula specified in the plan, which formula may be based on one or more factors such as the straight-time earnings or total earnings, base rate of pay, or length of service of the employee.

(e) The employer's total contribution in any year may not exceed 15 percent of the participating employees' total earnings during that year. In addition, the employer's total contribution in any year may not exceed the total amount saved or invested by the participating employees during that year: *Provided, however*, That a plan permitting a greater contribution may be submitted to the Administrator and approved by him as a ''bona fide thrift or savings plan'' within the meaning of section 7(e)(3)(b) of the Act if:

(1) The plan meets all the other standards of this section;

(2) The plan contains none of the disqualifying factors enumerated in § C547.2;

(3) The employer's contribution is based to a substantial degree upon retention of savings; and

(4) The amount of the employer's contribution bears a reasonable relationship to the amount of savings retained and the period of retention.

(f) The employer's contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employee retains his savings or investment in the plan: Provided, That no employee's share determined in accordance with the plan may be diminished because of any other remuneration received by him.

§ C547.2 Disqualifying provisions.

(a) No employee's participation in the plan shall be on other than a voluntary basis.

(b) No employee's wages or salary shall be dependent upon or influenced by the existence of such thrift or savings plan or the employer's contributions thereto.

(c) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan may not be based upon the employee's hours of work, production or efficiency.

PART C570—CHILD LABOR REGULATIONS

SUBPART A—GENERAL

Sec.
C570.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C570.1 Definitions.
C570.2 Minimum age standards.

SUBPART C—EMPLOYMENT OF MINORS BETWEEN 14 AND 16 YEARS OF AGE (CHILD LABOR REG. 3)

C570.31 Determination.
C570.32 Effect of this subpart.
C570.33 Occupations.
C570.35 Periods and conditions of employment.

SUBPART E—OCCUPATIONS PARTICULARLY HAZARDOUS FOR THE EMPLOYMENT OF MINORS BETWEEN 16 AND 18 YEARS OF AGE OR DETRIMENTAL TO THEIR HEALTH OR WELL-BEING

C570.50 General.
C570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1).
C570.52 Occupations of motor-vehicle driver and outside helper (Order 2).
C570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5).
C570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7).
C570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8).
C570.62 Occupations involved in the operation of bakery machines (Order 11).
C570.63 Occupations involved in the operation of paper-products machines (Order 12).
C570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14).
C570.66 Occupations involved in wrecking and demolition operations (Order 15).
C570.67 Occupations in roofing operations (Order 16).
C570.68 Occupations in excavation operations (Order 17).

SUBPART A—GENERAL

§ C570.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance Regulations under Section 202 of the CAA:

Secretary of Labor Regulations—OC Regulations.

570.1 Definitions—C570.1.

570.2 Minimum age standards—C570.2.

570.31 Determinations—C570.31.

570.32 Effect of this subpart—C570.32.

570.33 Occupations—C570.33.

570.35 Periods and conditions of employment—C570.35.

570.50 General—C570.50.

570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1)—C570.51.

570.52 Occupations of motor-vehicle driver and outside helper (Order 2)—C570.52.

570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5)—C570.55.

570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7)—C570.58.

570.59 Occupations involved in the operations of power-driven metal forming,

punching, and shearing machines (Order 8)—C570.59

570.62 Occupations involved in the operation of bakery machines (Order 11)—C570.62

570.63 Occupations involved in the operation of paper-products machines (Order 12)—C570.63.

570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14)—C570.65.

570.66 Occupations involved in wrecking and demolition operations (Order 15)—C570.66.

570.67 Occupations in roofing operations (Order 16)—C570.67.

570.68 Occupations in excavation operations (Order 17)—C570.68.

§ C570.1 Definitions.

As used in this part:

(a) *Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219).

(b) *Oppressive child labor* means employment of a minor in an occupation for which he does not meet the minimum age standards of the Act, as set forth in Sec. 570.2 of this subpart.

(c) *Oppressive child labor age* means an age below the minimum age established under the Act for the occupation in which a minor is employed or in which his employment is contemplated.

(d) [Reserved]

(e) [Reserved]

(f) *Secretary* or *Secretary of Labor* means the Secretary of Labor, United States Department of Labor, or his authorized representative.

(g) *Wage and Hour Division* means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

(h) *Administrator* means the Administrator of the Wage and Hour Division or his authorized representative.

§ C570.2 Minimum age standards.

(a) All occupations except in agriculture. (1) The Act, in section 3(1), sets a general 16-year minimum age which applies to all employment subject to its child labor provisions in any occupation other than in agriculture, with the following exceptions:

(i) The Act authorizes the Secretary of Labor to provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor, if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being (see subpart C of this part); and

(ii) The Act sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being.

(2) The Act exempts from its minimum age requirements the employment by a parent of his own child, or by a person standing in place of a parent of a child in his custody, except in occupations to which the 18-year age minimum applies and in manufacturing and mining occupations.

SUBPART B [RESERVED]

SUBPART C—EMPLOYMENT OF MINORS BETWEEN 14 AND 16 YEARS OF AGE (CHILD LABOR REG. 3)

§ C570.31 Determination.

The employment of minors between 14 and 16 years of age in the occupations, for the periods, and under the conditions hereafter specified does not interfere with their schooling or with their health and well-being and shall not be deemed to be oppressive child in labor.

§ C570.32 Effect of this subpart.

In all occupations covered by this subpart the employment (including suffering or permitting to work) by an employer of minor employees between 14 and 16 years of age for the periods and under the conditions specified in § 570.35 shall not be deemed to be oppressive child labor within the meaning of the Fair Labor Standards Act of 1938.

§ C570.33 Occupations.

This subpart shall apply to all occupations other than the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations which the Secretary of Labor may, pursuant to section 3(1) of the Fair Labor Standards Act and Reorganization Plan No. 2, issued pursuant to the Reorganization Act of 1945, find and declare to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being;

(f) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(2) Warehousing and storage;

(3) Communications and public utilities;

(4) Construction (including demolition and repair); except such office (including ticket office) work, or sales work, in connection with paragraphs (f)(1), (2), (3), and (4) of this section, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

§ C570.35 Periods and conditions of employment.

(a) Except as provided in paragraph (b) of this section, employment in any of the occupations to which this subpart is applicable shall be confined to the following periods:

(1) Outside school hours;

(2) Not more than 40 hours in any 1 week when school is not in session;

(3) Not more than 18 hours in any 1 week when school is in session;

(4) Not more than 8 hours in any 1 day when school is not in session;

(5) Not more than 3 hours in any 1 day when school is in session;

(6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

SUBPART D [RESERVED]

SUBPART E—OCCUPATIONS PARTICULARLY HAZARDOUS FOR THE EMPLOYMENT OF MINORS BETWEEN 16 AND 18 YEARS OF AGE OR DETRIMENTAL TO THEIR HEALTH OR WELL-BEING

§ C570.50 General.

(a) Higher standards. Nothing in this subpart shall authorize non-compliance with any Federal law or regulation establishing a higher standard. If more than one standard within this subpart applies to a single activity the higher standard shall be applicable.

(b) Apprentices. Some sections in this subpart contain an exemption for the employment of apprentices. Such an exemption shall apply only when: (1) The apprentice is employed in a craft recognized as an apprenticeable trade; (2) the work of the apprentice in the occupations declared particularly hazardous is incidental to his training; (3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and (4) the apprentice is registered by the Executive Director of the Office of Compliance as employed in accordance with the standards established by the Bureau of Apprenticeship and Training of the United States Department of Labor.

(c) Student-learners. Some sections in this subpart contain an exemption for the employment of student-learners. Such an exemption shall apply when:

(1) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school and;

(2) Such student-learner is employed under a written agreement which provides:

(i) That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his training;

(ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and

(iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner, even though he is not yet 18 years of age.

§ C570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1).

(a) Finding and declaration of fact. The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components are particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being:

(1) All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in paragraph (a)(2) of this section) manufacturing or storing explosives or articles containing explosive components except where the occupation is performed in a ''nonexplosives area'' as defined in paragraph (b)(3) of this section.

(2) The following occupations in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(i) All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any

duties in the explosives area in which explosive compounds are manufactured or mixed.

(ii) All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.

(iii) All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(iv) All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.

(v) All occupations involved in the loading, inspecting, packing, shipping and storage of blasting caps.

(b) Definitions. For the purpose of this section:

(1) The term plant or establishment manufacturing or storing explosives or articles containing explosive component means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.

(2) The terms explosives and articles containing explosive components mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR parts 71 to 78) issued pursuant to the Act of June 25, 1948 (62 Stat. 739; 18 U.S.C. 835).

(3) An area meeting all of the criteria in paragraphs (b)(3) (i) through (iv) of this section shall be deemed a ''nonexplosives area'':

(i) None of the work performed in the area involves the handling or use of explosives;

(ii) The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings;

(iii) The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and

(iv) Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria of paragraphs (b)(3) (i) through (iii) of this section.

§ C570.52 Occupations of motor-vehicle driver and outside helper (Order 2).

(a) Findings and declaration of fact. Except as provided in paragraph (b) of this section, the occupations of motor-vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type identified in § C570.68(a) are particularly hazardous for the employment of minors between 16 and 18 years of age.

(b) Exemption—Incidental and occasional driving. The findings and declaration in paragraph (a) of this section shall not apply to the operation of automobiles or trucks not exceeding 6,000 pounds gross vehicle weight if such driving is restricted to daylight hours; *provided*, such operation is only occasional and incidental to the minor's employment; that the minor holds a State license valid for the type of driving involved in the job performed and has completed a State approved driver education course; and *provided further*, that the vehicle is equipped with a seat belt or similar restraining device for the driver and for each helper, and the employer has instructed each minor that such belts or other devices must be used. This paragraph shall not be applicable to any occupation of motor-vehicle driver which involves the towing of vehicles.

(c) Definitions. For the purpose of this section:

(1) The term *motor vehicle* shall mean any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.

(2) The term *driver* shall mean any individual who, in the course of employment, drives a motor vehicle at any time.

(3) The term *outside helper* shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.

(4) The term *gross vehicle weight* includes the truck chassis with lubricants, water and a full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis and body equipment, and payload.

§ C570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5).

(a) Finding and declaration of fact. The following occupations involved in the operation of power-driven wood-working machines are particularly hazardous for minors between 16 and 18 years of age:

(1) The occupation of operating power-driven woodworking machines, including supervising or controlling the operation of such machines, feeding material into such machines, and helping the operator to feed material into such machines but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines.

(3) The occupations of off-bearing from circular saws and from guillotine-action veneer clippers.

(b) Definitions. As used in this section:

(1) The term power-driven woodworking machines shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer.

(2) The term off-bearing shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include: (i) The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expulsion roller, and (ii) the following operations when they do not involve the removal of material or refuse directly from a saw table or from the point of operation: The carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in Sec. 570.50 (b) and (c).

§ C570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7).

(a) Finding and declaration of fact. The following occupations involved in the operation of power-driven hoisting apparatus are particularly hazardous for minors between 16 and 18 years of age:

(1) Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one ton capacity.

(2) Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

(3) Work of assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

(b) Definitions. As used in this section:

(1) The term elevator shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators (including portable elevators or tiering machines), but shall not include dumbwaiters.

(2) The term crane shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot-pouring, jib, locomotive, motor-truck, overhead traveling, pillar jib, pintle, portal, semi-gantry, semi-portal, storage bridge, tower, walking jib, and wall cranes.

(3) The term derrick shall mean a power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with an hoisting mechanism or operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

(4) The term hoist shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term shall include all types of hoists, such as base mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

(5) The term high-lift truck shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include highlift trucks known under such names as fork lifts, fork trucks, fork-lift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of but not the tiering of material.

(6) The term manlift shall mean a device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; such belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

(c) Exception. (1) This section shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of

the car interior (exclusive of vents and other necessary small openings), the car door, and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all such doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over travel by the car.

(2) For the purpose of this exception the term automatic elevator shall mean a passenger elevator, a freight elevator, or a combination passenger-freight elevator, the operation of which is controlled by pushbuttons in such a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

(3) For the purpose of this exception, the term automatic signal operation elevator shall mean an elevator which is started in response to the operation of a switch (such as a lever or pushbutton) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

§ C570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8).

(a) Finding and declaration of fact. The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator of or helper on the following power-driven metal forming, punching, and shearing machines:

(i) All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.

(ii) All pressing or punching machines, such as punch presses except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.

(iii) All bending machines, such as apron brakes and press brakes.

(iv) All hammering machines, such as drop hammers and power hammers.

(v) All shearing machines, such as guillotine or squaring shears; alligator shears; and rotary shears.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

(b) Definitions. (1) The term operator shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

(2) The term helper shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

(3) The term forming, punching, and shearing machines shall mean power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving parts. Types of forming, punching, and shearing machines enumerated in this section are the machines to which the designation is by custom applied.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in Sec. 570.50 (b) and (c).

§ C570.62 Occupations involved in the operation of bakery machines (Order 11).

(a) Finding and declaration of fact. The following occupations involved in the operation of power-driven bakery machines are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machine; or cake cutting band saw.

(2) The occupation of setting up or adjusting a cooky or cracker machine.

§ C570.63 Occupations involved in the operation of paper-products machines (Order 12).

(a) Findings and declaration of fact. The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operation or assisting to operate any of the following power-driven paper products machines:

(i) Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single-or-double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.

(ii) Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those which do not involve hand feeding.

(b) Definitions. (1) The term operating or assisting to operate shall mean all work which involves starting or stopping a machine covered by this section, placing or removing materials into or from the machine, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

(2) The term paper products machine shall mean all power-driven machines used in:

(i) The remanufacture or conversion of paper or pulp into a finished product, including the preparation of such materials for recycling; or

(ii) The preparation of such materials for disposal. The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

§ C570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14).

(a) Findings and declaration of fact. The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator of or helper on the following power-driven fixed or portable machines except machines equipped with full automatic feed and ejection:

(i) Circular saws.

(ii) Band saws.

(iii) Guillotine shears.

(2) The occupations of setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

(b) Definitions. (1) The term operator shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

(2) The term helper shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

(3) The term machines equipped with full automatic feed and ejection shall mean machines covered by this Order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.

(4) The term circular saw shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

(5) The term band saw shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

(6) The term guillotine shear shall mean a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

§ C570.66 Occupations involved in wrecking and demolition operations (Order 15).

(a) Finding and declaration of fact. All occupations in wrecking and demolition operations are particularly hazardous for the employment of minors between 16 and 18 years of age and detrimental to their health and well-being.

(b) Definition. The term wrecking and demolition operations shall mean all work, including clean-up and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure.

§ C570.67 Occupations in roofing operations (Order 16).

(a) Finding and declaration of fact. All occupations in roofing operations are particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health.

(b) Definition of roofing operations. The term roofing operations shall mean all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate, metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term shall also include all work performed in connection with: (1) The installation of roofs, including related metal work such as flashing and (2) alterations, additions, maintenance, and repair, including

painting and coating, of existing roofs. The term shall not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

§ C570.68 Occupations in excavation operations (Order 17).

(a) Finding and declaration of fact. The following occupations in excavation operations are particularly hazardous for the employment of persons between 16 and 18 years of age: (1) Excavating, working in, or backfilling (refilling) trenches, except (i) manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point, or (ii) working in trenches that do not exceed four feet in depth at any point.

(2) Excavating for buildings or other structures or working in such excavations, except: (i) Manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, or (ii) working in an excavation not exceeding such depth, or (iii) working in an excavation where the side walls are shored or sloped to the angle of repose.

(3) Working within tunnels prior to the completion of all driving and shoring operations.

(4) Working within shafts prior to the completion of all sinking and shoring operations.

(b) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in Sec. C570.50 (b) and (c).

OFFICE OF COMPLIANCE

The Congressional Accountability Act of 1995: Extension of Rights and Protections Under the Family and Medical Leave Act of 1993

Notice of proposed rulemaking

Summary: This notice contains proposed regulations to extend rights and protections under the Family and Medical Leave Act of 1993 (''FMLA'') to employees of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below. These proposed regulations implement sections 202 (a) and (b) of the Congressional Accountability Act of 1995 (''CAA''), Public Law 104–1, 2 U.S.C. §§ 1312(a)–(b).

The CAA extends the rights and protections of eleven labor and employment laws to covered employees within the legislative branch. Section 202 governs the extension of the rights and protections of the FMLA to covered employees and employing offices of the House of Representatives, the Senate, and seven Congressional instrumentalities listed in paragraph (3) below. The purposes of the FMLA include entitling employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition.

This notice proposes that substantially similar regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities; and their employees. Accordingly:

(1) *Senate*. It is proposed that regulations as described in this notice be included in the body of regulations that shall apply to the Senate and employees of the Senate, and this proposal regarding the Senate and its employees is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) *House of Representatives*. It is further proposed that regulations as described in this notice be included in the body of regulations that shall apply to the House of Representatives and employees of the House of Representatives, and this proposal regarding the House of Representatives and its employees is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) *Certain Congressional instrumentalities*. It is further proposed that regulations as described in this notice be included in the body of regulations that shall apply to the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment, and their employees; and this proposal regarding these seven Congressional instrumentalities is recommended by the Office of Compliance's Executive Director.

Dates: Comments are due on or before the date 30 days after the date of publication of this notice in the Congressional Record.

Addresses: Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 252–3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Library of Congress, James Madison Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Executive Director, Office of Compliance, at (202) 252–3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, at (202) 224–2507.

Supplementary information:

A. *Background*.

Statutory background. The Congressional Accountability Act of 1995 (''CAA''), 2 U.S.C. §§ 1301 et seq., was enacted into law on January 23, 1995. The CAA extends the application of eleven federal labor and employment laws to covered employees and employing offices within the legislative branch.

Sections 202 (a) and (b) of the CAA apply rights and protections of the Family and Medical Leave Act of 1993 (''FMLA'') to covered employees and employing offices. The FMLA generally requires employers to permit covered employees to take up to 12 weeks of unpaid, job-protected leave during a 12-month period for the birth of a child and to care for the newborn; placement of a child for adoption or foster care; care of a spouse, child, or parent with a serious health condition; or an employee's own serious health condition. The FMLA and the regulations of the Secretary of Labor (''Secretary'') implementing the FMLA contain provisions concerning the maintenance of health benefits during leave, job restoration after leave, notice and medical certifications of the need for FMLA leave, and the relationship of FMLA leave to the rights under other employment laws including the Americans With Disabilities Act, workers compensation, and Title VII of the Civil Rights Act of 1964.

Section 202(d) of the CAA directs the Board of Directors of the Office of Compliance established under the CAA to issue regulations to implement the rights and protections under section 202. Section 202(d)(2) further states that the regulations ''shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202] except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

Offices to which the proposed regulations apply. As noted above in the Summary, the regulations proposed in this notice are to be adopted in three separate bodies of regulations: (1) one applying to the Senate and its employees, (2) one applying to the House of Representatives and its employees, and (3) one applying to the seven Congressional instrumentalities listed above in the Summary, and their employees.[1] It is proposed that there will be only minor, non-substantive variations among the three versions of these regulations. These proposed variations are set forth in the proposed regulatory language included in this NPRM.

B. The Advance Notice of Proposed Rulemaking, and Response to Comments

On September 28, 1995, the Board of Directors of the Office of Compliance issued an Advance Notice of Proposed Rulemaking (''ANPRM'') soliciting comments from interested parties in order to obtain information and participation early in the rulemaking process. 141 Cong. Rec. S 14542 (daily ed., Sept. 28, 1995). In addition to inviting comment on specific questions arising under five of the statutes made applicable by the CAA, the Board and the Executive Director, and the Deputy Executive Directors of the Office of Compliance have consulted with the Chair of the Administrative Conference of the United States, the Secretary of Labor, and the Director of the Office of Personnel Management with regard to the development of these regulations in accordance with Section 304(g) of the CAA. Based on the information gleaned from these comments on the ANPRM and this consultation, the Board is publishing these proposed rules pursuant to section 202(d) of the CAA, 2 U.S.C. § 1312(d).

In response to the ANPRM, the Board received comments from a variety of sources expressing a wide range of views. The following discussion describes issues raised by the ANPRM and by comments in response to the ANPRM, and explains how the Board has taken these comments into account in developing proposed regulations. The Board invites further comments on the regulations proposed in this notice.

The first two issues—on whether the Board should modify the Secretary of Labor's regulations, and on notice posting and recordkeeping—are generic issues that arise under several statutes made applicable by the CAA. The comments on these issues and the Board's conclusions are fully discussed in the Notice of Proposed Rulemaking (NPRM) regarding the application of the Fair Labor Standards Act (FLSA). The NPRM regarding the FLSA is being published today, in this issue of the Congressional Record. Therefore, the comments and analysis regarding these two issues are only briefly summarized in this notice, and the reader is directed to the

[1] This notice does not apply to the General Accounting Office (''GAO''), the Government Printing Office (''GPO''), or the Library of Congress (the ''Library''). Section 201 of the FMLA already applies to GAO, GPO, and the Library (5 U.S.C. §§ 6381 et seq.); section 230 of the CAA requires a study of the application of the FMLA to these three agencies; and section 202(c) of the CAA amends the FMLA provisions applicable to the GAO and the Library, effective one year after the study is transmitted to Congress.

NPRM regarding the FLSA for a fuller discussion.

1. Whether and to what extent the board should modify the labor department's regulations

The first question posed in the ANPRM was the general question of whether and to what extent the Board should modify the Department of Labor's regulations with respect to all of the statutes made applicable by the CAA.

Those commenters who expressed views on this issue cited both the statute and the legislative history for the position that the CAA presumes that the regulations of the Department of Labor should generally not be modified. As noted above, the comments received in response to this question are summarized and discussed in the NPRM regarding the application of the FLSA, which is being published today in the CONGRESSIONAL RECORD.

Based on the comments and the Board's understanding of the law and the institutions to which it is being made applicable, the Board has decided to issue the FMLA regulations with only limited and necessary modifications to the Secretary's regulations. In making the FMLA applicable, the CAA changed the key definition of ''eligible employee,'' and the Board therefore proposes to make a corresponding modification to the definition of ''eligible employee'' in the Secretary's regulations. Certain conforming amendments and technical changes in the nomenclature of the Secretary's regulations have also been proposed, and those sections that are clearly inapplicable have specifically not been proposed for adoption by the Board. These proposed modifications to the Secretary's regulations are discussed below.

2. Notice posting and recordkeeping

The ANPRM also invited comment on whether the notice posting and recordkeeping requirements of the various laws made applicable by the CAA are incorporated as statutory requirements of the CAA. The ANPRM inquired whether, if such requirements were not incorporated, could and should the Board develop its own requirements pursuant to its ''good cause'' authority. The ANPRM also invited comment on proposing guidelines and models for recordkeeping and notice posting. As noted above, the comments received in response to these questions are summarized and discussed in the NPRM regarding the application of the FLSA.

The Board agrees with those commenters who took the position that, if employing offices are to be treated the same as private sector employers are treated under the FMLA, they should have to comply with the statute's notice posting and recordkeeping requirements. Moreover, the Board notes that notice posting and recordkeeping promote the full and effective enforcement of incorporated rights and protections. In the Board's view, notice posting and recordkeeping may well be in employers' interests both as a sound personnel practice and in order to defend against subsequent litigation.

But, while the CAA incorporates certain specific sections of the FMLA, the CAA explicitly did not incorporate the notice posting and recordkeeping requirements of Sections 109 and 106(b), of the FMLA. For the reasons discussed with respect to the FLSA, as the CAA has not incorporated the notice posting and recordkeeping requirements of the FMLA, the Board will not do so. Accordingly, the Board proposes not to adopt sections 825.300 and 825.500 of the Secretary's FMLA regulations.

For similar reasons, the Board is proposing not to adopt a provision of section 825.110(c) of the Secretary's regulations. Section 825.110(c) addresses the question of how to determine whether the 1,250-hour leave-eligibility requirement has been satisfied. This section states that the principles established under the Fair Labor Standards Act (FLSA) will be used, and states further that, if an employer does not maintain an accurate record of hours worked, the employer has the burden of showing that the employee has not worked the requisite number of hours. Section 825.110(c) further provides that, in the event the employer is unable to meet this burden, the employee is deemed to have met the test. Section 101(2)(C) of the FMLA states that, for purposes of determining whether an employee worked the requisite 1,250 hours, the legal standards established under the FLSA shall apply. Although section 101(2)(C) of the FMLA incorporates the recordkeeping requirements of the FLSA, the Board has concluded that section 101(2)(C) does not make the FLSA recordkeeping requirements applicable under the CAA. This is because, by excluding the FLSA recordkeeping requirements from the FLSA provisions of the CAA, Congress indicated its intent that those recordkeeping requirements should not apply with respect to any CAA requirement. Accordingly, the Board has concluded that the legal authority supporting the Secretary's regulatory provision regarding burdens was not incorporated into the FMLA provisions of the CAA, and this regulatory provision is not included in the Board's proposed regulations.

The Board notes, however, that, as a practical matter, implementation of the FMLA, as made applicable by the CAA, requires an adequate system of keeping records. Such records will be needed, for example, for the employing office to know when employees have satisfied the 12-months and 1,250-hours of service for eligibility, and to keep track of how much FMLA leave each employee has taken during a leave year. As various commenters suggest, the Board will provide guidance to employing offices concerning model recordkeeping practices as part of carrying out its program of education under section 301(h)of the CAA (2 U.S.C. 1381(h)).

The Board would also note, as it did in the NPRM involving the application of the rights and protections of the FLSA, that the absence of recordkeeping and notice posting requirements may create a void which can only partially be filled by the program of education to be carried out by the Board. The Board also would emphasize that employees will in many circumstances be able to establish a prima facie case simply by their own testimony where the employing office has failed to maintain adequate, accurate records and an employing office may find that its ability to respond to an employee's prima facie case is substantially burdened by its failure to keep accurate records. If Congress wishes to experience the same burdens as faced by the private sector and also to address these issues, it should enact recordkeeping requirements comparable to those of the FMLA. (Of course, like the regulations under the FMLA, such recordkeeping requirements may leave to the discretion of each employing office the precise form and manner in which records will be kept.) But, in light of the text and structure of the CAA, the Board believes that it is up to Congress to decide whether to do so.

Finally, section 825.304(c) of the Secretary's regulations refers to the posting of notices without mandating such posting. Section 825.304 implements section 102(e) of the FMLA which requires that an employee give the employer at least 30 days'' advance notice of any foreseeable FMLA leave. The regulation provides that, if such notice is not provided, the employer may delay the taking of FMLA leave until at least 30 days after the date of actual notice from the employee. However, in order for the onset of leave to be delayed for lack of required notice, paragraph (c) requires that it must be clear that the employee had actual notice of the FMLA notice requirements. Finally, the paragraph offers that ''This condition would be satisfied by the employer's proper posting of the required notice at the worksite where the employee is employed.'' Because this regulation implements section 102(e) of the FMLA, the Board believes that it must be adopted, absent good cause to modify it. Only a minor modification is needed. Under section 301(h) of the CAA, the Office must distribute information to employing offices in a form suitable for posting, but there is no requirement that the information actually be posted. Accordingly, the Board proposes to refer not to the ''required notice'', but to the ''information distributed by the Office suitable for posting''.

3. May an employee aggregate months and hours worked at more than one employing office to satisfy the 12-months and 1,250-hours of work conditions for eligibility?

Both the FMLA and the CAA include definitions of ''eligible employee'' which require that, to be eligible for FMLA leave, an employee must first have been employed for 12 months and for at least 1,250 hours during the previous 12-month period. However, the wording of the two definitions is significantly different.

The FMLA definition of ''eligible employee'' requires employment for at least 12 months ''by the employer with respect to whom leave is requested'' and for at least 1,250 hours of service during the previous 12 months with ''such employer''. In contrast, under section 202(a)(2)(B) of the CAA, an ''eligible employee'' is defined as a covered employee who has been employed in ''any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months''. It is clear that the FMLA definition requires that the 12 months and 1,250 hours must have been worked for the same employer from which the employee requests leave. However, the CAA is ambiguous as to whether an employee who worked for more than one employing office can aggregate the months and hours of employment from more than one employing offices to satisfy the 12-month and 1,250-hour requirements.

Accordingly, the ANPRM asked: Whether and, if so, how the 12 months and 1,250 hours of work should be calculated for employees who worked for more than one employing office.

Commenters expressed opposing views on this question:

One commenter argued that each employing office, in practice and under the CAA, is a separate, independent employer. Therefore, ''employing offices'' under the CAA should be treated the same as ''employers'' under the FMLA. Under this view, except in unusual circumstances, an employee must have worked for 12 months, and for 1,250 hours within the previous 12 months, for the particular employing office from which leave is requested.

Another commenter argued that employing offices under the CAA should be treated the same as part of a single institutional ''employer'' under the FMLA. The Board should treat employing offices as part of a single employer. In this view, employing offices would be analogous to the separate ''establishments'' or ''divisions'' of a single corporate employer.

A third view, with respect to the 1,250-hour requirement, was presented by another commenter. For employees who are employed by more than one employing office, the Board

should make clear that hours of employment in each employing office will be considered when determining whether or not the 1,250 hour threshold has been met.

The Board believes that the language of the CAA is ambiguous. According to the dictionary, among several possible meanings, the term ''any'' may mean ''one (no matter which one) of more than two'', or it may mean ''every''. Webster's New Universal Unabridged Dictionary (deluxe 2d ed., 1983). If the first meaning were applied, the 12 months and 1,250 hours would have to be accrued in one single employing office; if the second meaning were applied, the months and hours could be aggregated from every employment office where the employee worked.

The Board has concluded that the better understanding of the CAA language is the latter one. The FMLA definition is explicit that the 12 months must have been served with ''the employer with respect to whom leave is requested'', and the 1,250 hours of service must also have been with ''such employer''. However, in the CAA, Congress substituted the phrase ''any employing office'' in place of the FMLA's precise reference to the particular employer from whom leave is requested. It therefore appears that eligibility should be determined on the basis of months and hours worked for employing offices other than just the one from which the leave is requested.[2]

Based on the Board's understanding of the meaning of the CAA, the Board proposes to modify the regulations as promulgated by the Secretary—(1) to incorporate the definition of ''eligible employee'' as set forth in section 202 of the CAA, and (2) to include language clarifying that, where an employee works for two or more employing offices, the months and hours worked will be aggregated for purposes of determining eligibility. (See §§825.110, 825.800 of the proposed regulations.)

4. Should the Board's regulations retain the House of Representatives rule under which employees are eligible for FMLA leave immediately upon employment?

Title V of the FMLA has applied certain rights and protections to the House and Senate since August 1993. Section 502, which applies to the House of Representatives, and rules adopted in the House to implement section 502, provide that House employees become eligible for FMLA leave immediately, without any minimum months or hours of employment.

In response to the ANPRM, some commenters questioned whether the Board should retain this approach for the House. Certain commenters argued that making FMLA leave immediately applicable in the House is based on the maximum two-year employment period in the House, which comes to a discrete end in the House at the conclusion of each Congress. Immediate eligibility allegedly diminishes many of the anticipated problems and issues regarding the administration of the leave year, treatment of joint employer status, and inconsistency of application. Accordingly, they urged the Board to retain current immediate eligibility for the House. Other commenters urged the opposite—i.e., that the Board should retain the private-sector eligibility requirements of 12 months and 1,250 hours.

The Board recognizes that the two-year employment cycle of the House of Representatives creates terms and conditions of employment which differ from the private sector. The Board also recognizes that at least some within the House of Representatives believe that immediate FMLA eligibility is an important element of an appropriate FMLA program for the House. However, for the Board's regulations to make House employees immediately eligible for FMLA leave would go beyond the express terms of the CAA.

Of course, neither the FMLA, as applied by the CAA, nor the regulations being proposed by the Board, would forbid the House from establishing a more generous leave program under its own authority. See §403 of the FMLA (applied by §225(f)(1) of the CAA); §825.700 of the proposed regulations. These provisions state that employing offices are not intended to be discouraged from adopting or retaining leave policies more generous than any policies that comply with FMLA requirements. Therefore, individual employing offices remain free to grant leave to employees immediately upon employment, and nothing in the FMLA, as applied by the CAA, should affect any ability of the House to mandate immediate leave-eligibility for all House employing offices under its own authority. This should enable the House to retain much of the value of its current FMLA program, if the House determines that it wishes to retain immediate eligibility for leave.

The Board recognizes that, if the House decides to grant leave to employees who do not satisfy the CAA definition of an ''eligible employee,'' attention must be paid to the question of how such leave would be treated under both FMLA and FLSA, as made applicable by the CAA. For example, an employing office may wish to ''dock'' an employee's pay for leave taken for partial-day absences. However, §825.206(c) of the Board's proposed regulations provide: ''Hourly or other deductions which are not in accordance with [applicable requirements under FLSA regulations] may not be taken, for example, where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption [from FLSA requirements].'' Furthermore, in preamble language to the Secretary's FMLA regulations, the Secretary stated: ''Leave granted under circumstances that do not meet FMLA's coverage, eligibility, or specified reasons for FMLA-qualifying leave may not be counted against FMLA's 12-week entitlement.'' 60 Fed. Reg. 2230, col. 1 (Jan. 6, 1995).

In light of all of these factors, the Board does not believe that good cause exists for the Board's regulations to make House employees immediately eligible for FMLA leave.

5. Should the Board designate a uniform leave year?

As noted above, title V of the FMLA made certain rights and protections under the FMLA available to employees of the House and Senate. On August 5, 1993, the House Committee on House Administration adopted regulations and forms to implement the FMLA in the House. Among other things, these rules designated the period from January 3 of one year through January 2 of the following year as the FMLA ''leave year'' for all employers of the House. (The term ''leave year'' is used here to refer to the 12-month period within which the 12 weeks of leave may be taken.) This regulation has been retained by the Committee on House Oversight. However, section 502 of the FMLA, upon which the House regulations were based, is repealed by the CAA effective January 23, 1996.

With this as background, the ANPRM posed the following question: whether there is ''good cause'' to believe that designating a uniform FMLA leave year would be ''more effective'' for implementation of the rights and protections of the CAA than the regulations promulgated by the Secretary. The Secretary's regulations provide considerable freedom to employers to designate the 12-month period appropriate to their office.

Several commenters supported the use of a uniform leave year, and urged the Board to retain a uniform year in its rules, at least for the House. Other commenters disagreed.

Favoring the uniform leave year:

Certain commenters argued that the January 3 through January 2 period is based on the maximum two year employment period in the House, which comes to a discrete end at the conclusion of each Congress. Because this two-year employment cycle is unique to the House, the Board's regulations should ''retain'' the current, uniform manner in which FMLA is applied to the House, as a more effective way to implement the FMLA than the various options for defining leave years available under the Secretary's regulations. Furthermore, the uniform leave year is much easier to implement and understand, so that employees are less likely to lose their rights.

Another commenter pointed out that joint employment is very common in Congress, and argued that applying different leave years will cause administration to be problematic.

Opposing a uniform leave year:

Other commenters were doubtful of the need for the Board to establish a uniform leave year for the House, and saw no reason why employing offices should be denied flexibility.

Another commenter clearly took a position opposed to establishing a uniform leave year for the Senate. Each employing office should be allowed to choose any method allowed by the Secretary's regulations, and there is no ''good cause'' to restrict employers' choice.

The Board recognizes that the use of a uniform leave year may have advantages. However, there is also value in allowing employing offices the flexibility to apply a leave year that is appropriate to the office's circumstances.

Much of the advantage of a uniform leave year, as described by the commenters, involves making the FMLA program easier for the employing offices and for the House payroll and administrative offices to administer. However, nothing in the FMLA, as applied by the CAA, or in the regulations being proposed by the Board thereunder, would forbid the House from retaining these benefits by retaining its uniform leave year under the House's own authority. Under the FMLA and the Secretary's regulations, each employer is free to select a leave year. The Board is unaware of anything in the FMLA or the Secretary's regulations that would forbid House employing offices from establishing a uniform leave year for themselves, either by voluntary agreement among employing offices, or by establishing a uniform year under the House's authority of self-regulation. (Senate employing offices would, of course, also be free to consider a uniform leave year for some or all Senate employing offices, if they so desire.)

The Board also recognizes that use of a uniform leave year may provide some benefits and protections for eligible employees. When employees transfer from one employing office to another, or when they work simultaneously for more than one employing office, the application of different leave years by different employing offices could cause confusion and, in some circumstances, could limit flexibility by forcing an employee to fit leave within the constraints of differently defined years. This concern is discussed below, under the topic of whether the

[2] This interpretation is consistent with the section-by-section analysis placed in the Congressional Record by Senator Grassley on behalf of himself and Senator Lieberman. Congressional Record, page S 623, col. 3 (Jan. 9, 1995).

use of different leave years would affect FMLA leave rights. As noted, when an employee works jointly for two or more employing offices that apply inconsistent leave years, the employing offices will have to apply a single leave year for the employee.

For these reasons, the Board does not believe that there is good cause to mandate a uniform leave year.

6. Should the definitions of ''joint employer'', ''integrated employer'', or ''successor employer'' be retained or modified?

In the ANPRM, the Board explained that, under certain circumstances under the Secretary's FMLA regulations, two or more employers of the same employee may be treated as a single employer. The concepts under which this may be done are set forth within the provisions applicable to ''joint employers'', ''integrated employers'', and ''successor employers.''

Accordingly, the ANPRM asked for comment regarding: Whether and, if so, how the definitions of ''joint employer'', ''integrated employer'', or ''successor employer'' set forth in the regulations promulgated by the Secretary should be applied and/or modified.

Commenters offered several varying proposals on how these definitions should be modified.

One commenter suggested that, where an employee works concurrently for more than one employing office, the employing offices might jointly decide which of the employing offices will be designated the ''primary'' employer for purposes of FMLA compliance.

Another commenter suggested that ''joint employment'' will occur in the House where an employee is under the actual direction and control of a Member, even if another employing authority, such as a committee, performs a ministerial function with respect to payroll administration.

A commenter stated that no two employing offices in the Senate are ever ''under common control''. A ''joint employer'' relationship was said to exist in the Senate in only three situations: (a) an employee supplied by a temporary or leasing agency or supplied by another agency on detail, (b) working in two Senators' joint home office, or (c) working on common issues or other matters for more than one employing office. Where there is no ''primary'' employer, all must designate a single leave year for all of their joint employees. The commenter also stated that the concepts of integrated employer and successors in interest are not applicable to the Senate.

Another commenter suggested that, in the case of joint employment, reinstatement rights should apply with respect to both joint employers.

Finally, a commenter suggested that the Board should adopt the Department of Labor's regulations and allow each employing office to interpret them.

Integrated employer. The Secretary's regulations use the term ''integrated employers'' to refer to employers that are so closely connected that they are deemed a single entity. Under these regulations, whether employers are an ''integrated employer'' is determined by review of the entire relationship, and the factors to be considered ''include': (i) common management, (ii) interrelation between operations, (iii) centralized control of labor relations, and (iv) common ownership/financial control.

If two employing offices were to be considered an ''integrated employer'' under the FMLA as applied by the CAA, employee eligibility and employer coverage would not be affected because employing offices are covered regardless of size, and employees'' months and hours worked for any employing offices are aggregated for determining eligibility. However, being deemed an ''integrated employer'' may have implications for the determining employing offices'' compliance obligations, so the concept of ''integrated employer'' should not be discarded as irrelevant.

The first three criteria listed in the Secretary's regulation—i.e., common management, interrelated operations, and centralized control of labor relations—appear to be clearly relevant and appropriate to determining whether two or more offices should be considered a single employing office. One commenter argued that the fourth criterion—common ownership/financial control—is foreign to the Senate. The Board agrees that ''common ownership'' is inapplicable to employing offices and their employees, and proposes not to adopt it. ''Financial control'' would probably not be applicable to employing offices in ordinary circumstances, but, in light of the fact that this criterion might prove to be useful in dealing with some unanticipated circumstance, the Board sees no need to omit this criterion.

For these reasons, the Board does not believe that there is good cause to omit the regulation on ''integrated employer,'' and the Board proposes only to delete the reference to ''common ownership'' from the regulation.

Successor in interest. Like the ''integrated employer'' provision, the ''successor in interest'' concept has no implications for whether employees are eligible or employing offices are covered. However, some situations may arise where the concept of successorship will be relevant. For example, if committee jurisdictions are restructured, it may be necessary to determine which, if any, of the surviving committees is the ''successor in interest'' to the former committee. Thus, determining the successor may be important in determining whether a remaining committee must grant leave for an eligible employee who provided adequate notice to the former committee, or must continue leave begun while an employee was employed by the former committee.

The concept of ''successor in interest'' is developed in section 825.107 of the Secretary's regulations. The regulations state that a determination of whether a ''successor in interest'' exists is determined by the ''entire circumstances * * * viewed in their totality''. The regulation also states: ''The factors to be considered include: (1) Substantial continuity of the same business operations; (2) Use of the same plant; (3) Continuity of the work force; (4) Similarity of jobs and working conditions; (5) Similarity of supervisory personnel; (6) Similarity of machinery, equipment, and production methods; (7) Similarity of products or services; and (8) The ability of the predecessor to provide relief.''

The Board is concerned that several of the factors listed in 29 C.F.R. §825.107 are largely inapplicable. Except for a few shops, employing offices do not have ''business operations''. Few employing offices have a ''plant'', ''machinery, equipment, and production methods'' or ''products or services''. Accordingly, the Board proposes not to adopt §825.107 of the Secretary's regulations. Although the Board would wish to provide guidance on how the concept of ''successor employer'' would be applied under the CAA, it is impossible at this point to foresee how successorship will arise in the unique context of employing offices covered under the CAA. Accordingly, the determinations as to successorship may be addressed in future rulemaking or in case-by-case adjudication. In the latter situation, litigants may raise the question of successorship, and the Board would expect that common-law or other recognized principles of successorship might be considered or applied by the hearing officer, the Board, or a court.

Joint employers. The ''joint employer'' definition also would not affect employee eligibility, because hours of work are aggregated for eligibility purposes. However, the concept of joint employment is important for determining which employing office or employing offices have responsibility for FMLA compliance. The Board proposes that the regulatory section on joint employment can be adopted with relatively little revision. Examples of joint employment described in comments could be appropriately evaluated with reference to the criteria set forth in the regulation. For example, where an employee on a committee payroll is under the actual direction and control of a Member of the House of Representatives or a Senator, it may be relevant to consider whether the committee is acting ''in the interest of'' the Member's or Senator's personal office in relation to the employee, or whether the committee and the personal office are under ''common control'' with respect to the employee's employment. (See §§825.106(a)(2)–(3) of these proposed regulations.) The Board therefore proposes to add to the regulation a reference to examples of joint employment proposed in comments.

Finally, the Board acknowledges the view expressed by some commenters, that there may not be a primary employer in every instance of joint employment, and that joint employers should, by agreement, designate which single employing office will be responsible for compliance with FMLA obligations with respect to the joint employee. However, any such agreement cannot relieve the other joint employing offices of any FMLA responsibilities that are not fulfilled.

7. Whether the use of different leave years by different employing offices would affect the FMLA leave rights of ''eligible employees'' who are employed by more than one employing office?

Finally, the Board in the ANPRM recognized that a uniform leave year might not be required under Board regulations, and therefore asked for comment whether the lack of uniformity could jeopardize employees' leave rights. The Board suggested that this question be considered in light of the definition of ''joint employer'', ''integrated employer'', and ''successor employer''.

A commenter distinguished the situation of joint employment from the situation of independent employment. In the case of joint employment, if there is no primary employer, all of the employers must jointly designate a leave year for the joint employees. If an employee works at separate times for separate, independent employers, the employers may designate different leave years without depriving the employee of any FMLA rights. If an employee moves from joint employment to become employed by only one of the employers, or moves from being employed by one employer to being employed by that and another employer jointly, and if the applicable leave year therefore changes, the procedure under §825.200(d)(1) would apply. (Under this section, when an employer chooses to shift from one leave year to another, the employee is authorized to take advantage of whichever leave year is more beneficial.)

A commenter suggested that the regulations should authorize joint House employing offices to designate which one will be the ''primary'' employer responsible for fulfilling FMLA responsibilities.

Furthermore, as noted above, commenters argued that a uniform leave year is easier to understand, so that employees are less likely

to lose their FMLA rights through inadvertence or otherwise, and that, if employing offices adopt different leave years, administration of the FMLA requirements would be problematic.

The Board recognizes that the use of inconsistent leave years may make implementation of FMLA provisions of the CAA more complicated, and might have some impact on employees who transfer from one employing office to another or who work independently for more than one employing office. However, where an employee is employed jointly by employing offices that ordinarily use different leave years, commenters suggested that the joint employers either (1) designate one employer whose leave year will apply, or (2) jointly designate an applicable leave year. Another commenter suggested that, where an employee transfers between being jointly employed and being employed by only one of the employing offices, the procedures under §825.200(d)(1) could apply. These approaches would not appear to raise difficulties, provided the employee's FMLA entitlement is not compromised.

In light of these considerations, the Board does not believe that there is good cause to modify the Secretary's regulations with respect to the possibility that different employing offices will apply different leave years.

C. Other drafting issues

Finally, in developing the regulations proposed in this notice, in addition to the policy issues discussed above, the Board considered the following drafting issues:

1. *Worksite eligibility*. Section 101(2)(B)(ii) of the FMLA denies eligibility to any employee at a worksite where the employer employs less than 50 employees if the total number of employees employed within a 75-mile radius is less than 50. This criterion is a ''size limitation'' that, under section 225(f)(2) of the CAA, does not apply under the CAA. Accordingly, a number of regulatory provisions relating to this worksite eligibility criterion are not included in the regulations proposed by the Board. These omitted provisions include some or all of 29 C.F.R. §§825.105, 825.106(d), 825.110(a)(3), 825.110(f), 825.111, 825.206(c), 825.220(b)(1).

2. *State and local law*. The Department of Labor's regulations contain numerous provisions that address or touch upon the relationship between the FMLA and State or local law addressing leave or related matters. Since State and local law do not govern the employment relationship of covered employees and employing offices, these references to State and local law are omitted from the regulations being proposed by the Board. These omitted provisions include some or all of 29 C.F.R. §§825.200(d)(2), 825.201, 825.202(c), 825.204(b), 825.206(c), 825.701, and other sections.

3. *Consideration of periods before the CAA effective date*. The CAA takes effect on January 23, 1996. Under the Secretary's regulations implementing FMLA, employment with a covered employer before the effective date of the FMLA (August 5, 1993) is to be counted in determining whether an employee is ''eligible'' for FMLA leave. 29 C.F.R. §825.102. Similarly, the Secretary's regulations provide that leave starting on and after the FMLA effective date is considered FMLA leave which can be counted against an employee's 12-week entitlement. Such leave is qualifying under the FMLA even if the event occasioning the need for leave (e.g., the birth of a child) occurred before the effective date. 29 C.F.R. §825.103. See also 29 C.F.R. §825.200(b)(4).

The proposed regulations adopt the Secretary's general approach regarding the effective date; however, the applicable effective dates for application of the rights and protections of the FMLA in the Congress are somewhat more complicated. The CAA, and its application of the rights and protections of the FMLA, takes effect on January 23, 1996. Section 202(e)(1) of the CAA. However, certain rights and protections of the FMLA applied to employees of the House of Representatives, the Senate, and certain employees of congressional instrumentalities under Title V of the FMLA, effective August 5, 1993. The proposed regulations harmonize these preexisting applications of FMLA rights and protections with application of those rights and protections under the CAA.

The proposed regulations state that an employing office must consider periods of employment before January 23, 1996 when determining if its employees are eligible for leave. Similarly, a covered employee is entitled to FMLA leave if the reason for the leave is qualifying under the FMLA as made applicable by the CAA, even if the event occasioning the leave (such as the birth of a child) occurred before January 23, 1996. However, leave taken before January 23, 1996, if it was FMLA-qualifying leave taken from an employing office subject to Title V of the FMLA, may be counted against the employee's leave entitlement after January 23, 1996. See §§825.102(b), 825.103, 825.200(b)(4).

The Board is cognizant of the principle that agencies may not promulgate regulations which have a retroactive effect unless expressly authorized by the enabling statute. *Landgraf* v. *USI Film Products*, 114 S.Ct. 1483, 1496 (1994). However, the Board concludes that consideration of periods of employment and events prior to the effective date of the CAA under the sections of the proposed regulations cited above does not constitute a retroactive application of the CAA. Unlike retroactive regulations, which ''impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed,'' 114 S.Ct. 1505, these regulations simply ''alter the future legal effect of past transactions—so-called secondary retroactivity,'' which does not violate the presumption against retroactivity. 114 S.Ct. at 1526 n.3 (Scalia, J. concurring). The regulations do not penalize an employing office for a refusal to grant an FMLA leave prior to the effective date of the CAA. They only state that employment and events occurring prior to the effective date of the CAA may be considered in determining the employer's obligation to honor a leave request on or after the effective date.

4. *Minimally paid leave in the Senate*. A commenter explained that the Senate currently provides minimally paid leave rather than unpaid leave under title V of the FMLA. The Secretary's regulations authorize providing greater benefits or pay than is required under the FMLA, and providing greater benefits and pay does not prevent the leave from being considered FMLA-qualifying leave. See section 825.700. Accordingly, the Board does not believe that the situation of minimally paid leave by the Senate needs to be addressed in the proposed regulations.

5. *Local educational agencies and private elementary and secondary schools*. Section 108 of the FMLA provides special rules for local educational agencies and for private elementary and secondary schools. Section 108 was not expressly referenced in section 202 of the CAA. However, the Board believes that section 108 establishes exemptions from certain requirements of those FMLA sections that are referenced in section 202. The provisions of section 108 therefore apply pursuant to section 225(f)(1) of the CAA. Accordingly, regulations implementing section 108 are included in the regulations being proposed by the Board.

6. *Notices other than by posting of notices*. As discussed above, the Board is not proposing regulations on the posting of notices because the statutory authority in the FMLA requiring notice posting was not incorporated into the CAA. However, the Board is proposing to adopt several regulations, based on the Secretary's regulations, that require both employing office and employees to provide notices to each other. The Board is proposing to adopt these notification requirements because they are based on regulations that the Secretary promulgated to implement section 101 through 105 of the FMLA, which are incorporated into the CAA.

For example, section 103(a) of the FMLA authorizes the employer to require that a request for leave be supported by a medical certification. This requirement is implemented by section 825.305 of the Secretary's regulations, which provides for the employer to give notice of any such requirement. Another example is FMLA section 104(a)(4), which authorizes an employer to have a uniformly applied ''practice or policy'' that requires employees to provide certification of fitness for duty upon returning from leave. The Secretary's regulations at section 825.310(e) require that, as part of a notice given to each employee who advises the employer of need for FMLA leave, the employer must advise the employee if a fitness-for-duty certification will be required. Furthermore, this section requires that, if the employer has an employee handbook, the employer must include in the handbook an explanation of the employer's general policy regarding any requirement for fitness-for-duty certification.

Section 825.301 of the Secretary's regulations requires the employer to provide a number of these notices in two consolidated formats. Under paragraph (b), the employer must provide a notice to each employee who informs the employer of need to take FMLA leave. This notice must inform the employee of whether the employee designates the leave as qualifying for FMLA leave, whether the employer requires certification of a health care provider, and numerous other matters. Paragraph (a) requires the employer to provide information on FMLA rights and responsibilities, together with a statement of the employer's policies regarding FMLA, as part of the employee handbook, if any. If there is no such handbook, the employer must include this information with the notice provided to employees who give notice that they need FMLA leave.

A Senate commenter suggested that paragraph (b) should not be adopted by the Board because there is no requirement in the FMLA, as incorporated in the CAA, for the employer to provide such notice. However, the Board believes that these notification requirements implement the general rights and protections of sections 101 through 105, which are incorporated in the CAA. The Board is not aware of good cause why these requirements should be excluded from the regulations under the CAA.

7. *Medical and other benefits*. In §825.209(a), in the definition of group health plans, the proposed regulations include an added reference to the Federal Employee Health Benefits Program, which applies to many covered employees. The Secretary's regulations identified certain laws governing benefits that may impose requirements above and beyond those of FMLA. However, other benefit requirements apply to covered employees and employing offices under federal statute and under rules and practices of the House, Senate, and Congressional instrumentalities. The Board sees no need to conform the FMLA regulations to the various laws and rules that govern employee benefits. Instead, the Board proposes to add to the regulations

an explicit recognition that there may be other applicable laws. E.g., proposed §§825.209(f), 825.309(b). However, covered employees and employing offices must understand that these regulations do not set forth all applicable requirements regarding benefits for covered employees on leave. Other sources must be consulted to determine applicable laws and rules other than those applied by the CAA. The Board is not aware of any way in which laws or rules applicable to covered employees may interfere with the power of employing offices to fully comply with the requirements of the FMLA.

Furthermore, a commenter suggested that certain regulatory provisions regarding payment and reimbursement of insurance premiums should refer to the Senate as well as, or instead of, to the employing office. The Board understands that such financial transactions are not undertaken by Senate employing offices directly. This reality is briefly acknowledged in an introductory explanatory provision, at §825.100(b). However, the CAA makes the employing office responsible for assuring that all requirements of the FMLA, as applied by the CAA, are complied with. For this reason, the disbursing or other administrative office of the Senate may be viewed as functioning as an agent for the employing office, and the Board does not believe that the regulatory requirements need to be modified to refer to the Senate directly.

Regarding another of the Secretary's regulations, the commenter suggested that a reference to ''the insurer'' should be deleted and replaced with a reference to the Senate. The Board recognizes that, in some situations, the Senate may serve as the intermediary between the employee and the insurer. In such circumstances, the employee would make arrangements with the insurer by means of making arrangements with the Senate. Accordingly, the Board does not believe that this suggested change is necessary.

The proposed regulations also omit, as inapplicable, a section on multi-employer health plans (§825.211) and a reference to the Employee Retirement Income Security Act of 1974 (ERISA) (in §825.215(d)).

8. *Charging leave taken from a prior employing office against the employee's FMLA entitlement.* A commenter urged that the Board's regulations should make it clear that, even when an employee transfers from one employing office to another, the employee does not become entitled to more than 12 weeks of leave in the applicable 12-month period.

To clarify this point, the Board proposes to amend the regulation that allows an employer to count an employee's FMLA leave against the employee's remaining 12-week FMLA entitlement. The existing Labor Department regulations implicitly assume that an employer may designate leave as FMLA leave and then count it against the employee's remaining entitlement. However, the regulations do not address the situation where FMLA leave taken from one employing office is counted by a subsequent employing office against the employee's total FMLA leave entitlement. This situation is not addressed in the Department of Labor regulations, because, in the private sector, no leave taken from a prior employer is of any relevance to a subsequent employer. The employee loses FMLA eligibility for at least 12 months after changing jobs, so leave taken from the former employer will be over 12 months old by the time the employee is eligible for any leave from the new employer.

Under the CAA, however, the employee remains eligible notwithstanding the transfer to a new employing office. Therefore, if the new employing office were not able to count any FMLA leave taken in the preceding months against the employee's entitlement, a covered employee could gain multiple FMLA leave periods, in excess of the entitlement under the FMLA, simply by repeatedly transferring from one employing office to another. Accordingly, the Board believes that good cause exists to clarify section 825.208 so that leave designated as FMLA leave by one employing office may be counted against the leave entitlement by other employing offices.

9. *Definition of ''employer''.* The definition of ''employer'' under the FMLA is different and far more varied than the definition of ''employer'' that applies under section 202 of the CAA. Therefore, several provisions in 29 C.F.R. part 825 that define who is an ''employer'' have been omitted. These include §825.104(a)–(b) (persons engaged in or affecting commerce), §825.104.(c)(1) and (d) (regarding corporations and persons acting for employers), §825.108 (regarding ''public agencies''), §825.109 (regarding Federal agencies). References to ''public agencies'', e.g., in section §825.209(a), and first part of §825.207(i) (which addresses compensatory time off for State and local employees), were also omitted.

10. *Business/financial terms.* Part 825 of the Secretary's regulations contain a number of references to business-related concepts—e.g., ''profit sharing'', ''business'', ''firm'', ''plant'', ''company,'' ''stock option'', ''profit sharing'', etc. These terms were omitted and, if the context so required, were sometimes replaced with appropriate corresponding terms such as ''employing office''.

11. *Persons other than covered employees and employing offices.* Section 202(a) of the CAA extends rights and protections only to covered employees. Therefore, certain provisions of the Secretary's regulations that would extend beyond these categories, have been omitted. For example, provisions that protect employees of contractors (§825.216(b)) and employees of temporary agencies and leasing agencies (§825.106) have been omitted because such employees cannot be ''covered employees'' as that term is defined in the CAA.

Furthermore, section 105 of the FMLA, which prohibits interference with FMLA rights and interference with FMLA proceedings and inquiries, extends rights to persons who are not employees and extends prohibitions to persons who are not employers. The Secretary's regulations, at §825.220, do likewise. To be consistent with the CAA, however, the proposed regulations have been modified to extend rights and protections only to covered employees, and to extend prohibitions only to employing offices.

12. *Pre-existing collective bargaining agreements.* Two provisions of the Secretary's regulations refer to collective bargaining agreements existing before the effective date of the FMLA. Sections 825.102(b), 825.700(c). Because collective bargaining agreements do not now exist within employing offices that are subject to these proposed regulations, these provisions have been omitted.

13. *Determinations as to who is a health care provider.* Section 101(6) of the FMLA defines ''health care provider'' as including, in addition to certain authorized doctors, ''Any other person determined by the Secretary to be capable of providing health care services.'' This same requirement is incorporated into the Secretary's regulations as section 825.118(a). The Board does not believe that this provision for determinations by the Secretary should be adopted under the CAA, because this provision would authorize enforcement by the executive branch, which is not authorized under section 225(f)(3) of the CAA. The Board therefore proposes to modify this regulation to authorize the Office of Compliance to certify health care professionals. However, the regulation would require the Office to follow any decisions by the Secretary granted to persons other than covered employees, absent good cause for the Office to conclude otherwise.

14. *Enforcement procedures.* Subpart D of the Secretary's regulations describes the enforcement mechanisms available under the FMLA. This has been replaced with a brief summary and cross-reference to the claims procedures available under the CAA.

15. *Effect on other applicable law.* Section 825.702 provides the Secretary's views about the interaction between FMLA and other applicable law. Because the nature of these laws' application, if any, under the CAA is not the same as their application discussed by the Secretary, certain language has been omitted from the section.

16. *Definitions.* In section 825.800, consistent with the changes discussed above, several definitions were omitted as inapplicable—e.g., Administrator, COBRA, Commerce, Person, Public Agency, State. Two were added—CAA and covered employee. And several were modified, including: eligible employee, employee, and employer.

D. Topics and organization of proposed regulations

The regulations being proposed in this notice are organized into subparts and sections that correspond to the subparts and sections promulgated by the Secretary at 29 C.F.R. Part 825. These regulations are divided into eight subparts:

Subpart A describes what the FMLA is and sets forth to whom it applies under the CAA.

Subpart B states what leave an employee is entitled to take under the FMLA as made applicable by the CAA.

Subpart C sets forth notice requirements, and states what information an employing office may require of an employee.

Subpart D refers to applicable enforcement mechanisms.

Subpart E is reserved.

Subpart F establishes special rules that apply to employees of schools.

Subpart G sets forth how other laws, employing office practices, and collective bargaining agreements affect employee rights under FMLA as made applicable by the CAA.

Subpart H sets forth applicable definitions.

Appendices included in the proposed regulations also provide certain forms and prototype notices.

E. Method of approval

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices be approved by the Congress by concurrent resolution.

Signed at Washington, D.C. on this 21st day of November, 1995.

GLEN D. NAGER,
Chair of the Board,
Office of Compliance.

§825.1 Purpose and scope

(a) Section 202 of the Congressional Accountability Act (CAA), 2 U.S.C. §1312, applies the rights and protections of sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2611–2615, to certain employees of the legislative branch.

(b) This part 825 contains substantive regulations that the Board of Directors of the Office of Compliance has adopted pursuant to

section 202 of the CAA. Section 202 provides that these substantive regulations should generally be the same as the substantive regulations promulgated by the Secretary of Labor to implement sections 101 through 105 of the FMLA. (The CAA allows these regulations to differ from the regulations promulgated by the Secretary only insofar as the Board may determine, for good cause shown, that a modification of such regulations would be more effective for the implementation of the rights and protections under section 202 of the CAA.) The regulations promulgated by the Secretary to implement the FMLA are found at 29 C.F.R. Part 825.

(c) Under the CAA, the Board issues three separate bodies of regulations to implement the FMLA as made applicable by the CAA—one applying to the Senate and its employees, one applying to the House of Representatives and its employees, and one applying to other covered employees and employing offices. This part 825 applies to [[1] the Senate and employees of the Senate/the House of Representatives and employees of the House of Representatives/the following employing offices and their employees: (1) the Capitol Guide Service, (2) the Capitol Police, (3) the Congressional Budget Office, (4) the Office of the Architect of the Capitol, (5) the Office of the Attending Physician, (6) the Office of Compliance, and (7) the Office of Technology Assessment].

SUBPART A—WHAT IS THE FAMILY AND MEDICAL LEAVE ACT, AND TO WHOM DOES IT APPLY UNDER THE CONGRESSIONAL ACCOUNTABILITY ACT?

§ 825.100 What is the Family and Medical Leave Act?

(a) The Family and Medical Leave Act of 1993 (FMLA), as made applicable by the Congressional Accountability Act (CAA), allows ''eligible'' employees of an employing office to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform the functions of his or her job (see § 825.306(b)(4)). In certain cases, this leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

(b) An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay his or her share during the leave period. The employing office or a disbursing or other financial office of the House of Representatives or the Senate may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's immediate family member, or another reason beyond the employee's control.

(c) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

(d) The employing office has a right to 30 days advance notice from the employee where practicable. In addition, the employing office may require an employee to submit certification from a health care provider to substantiate that the leave is due to the serious health condition of the employee or the employee's immediate family member. Failure to comply with these requirements may result in a delay in the start of FMLA leave. Pursuant to a uniformly applied policy, the employing office may also require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition (see § 825.311(c)). The employing office may delay restoring the employee to employment without such certificate relating to the health condition which caused the employee's absence.

§ 825.101 What is the purpose of the FMLA?

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The FMLA is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the FMLA accomplish these purposes in a manner that accommodates the legitimate interests of employers, and in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment in minimizing the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

(b) The enactment of FMLA was predicated on two fundamental concerns—the needs of the American workforce, and the development of high-performance organizations. Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

(c) The FMLA is both intended and expected to benefit employers as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

§ 825.102 When are the FMLA and the CAA effective for the Senate and its employees?

(a) The rights and protection of sections 101 through 105 of the FMLA have applied to certain Senate employees and certain employing offices of the Senate since August 5, 1993 (*see* section 501 of FMLA). The provisions of the CAA that apply the rights and protections of the FMLA will become effective on January 23, 1996.

§ 825.102 When are the FMLA and the CAA effective for the House of Representatives and its employees?

(a) The rights and protection of sections 101 through 105 of the FMLA have applied to any employee in an employment position and any employment authority of the House of Representatives since August 5, 1993 (*see* section 502 of FMLA). The provisions of the CAA that apply the rights and protections of the FMLA will become effective for the House of Representatives and its employees on January 23, 1996.

§ 825.102 When are the FMLA and the CAA effective for the employing offices covered by these regulations and their employees?

(a) The rights and protections of sections 101 through 105 of the FMLA already apply to certain employing offices covered by these regulations and certain employees of these employing offices (*see, e.g.*, Title V of the FMLA, sections 501 and 502). The provisions of the CAA that apply the rights and protections of the FMLA to the employing offices covered by these regulations and their employees will become effective on January 23, 1996.]

(b) The period prior to the effective date of the application of FMLA rights and protections under the CAA must be considered in determining employee eligibility.

§ 825.103 How does the FMLA, as made applicable by the CAA, affect leave in progress on, or taken before, the effective date of the CAA?

(a) An eligible employee's right to take FMLA leave began on the date that the rights and protections of the FMLA first went into effect for the employing office and employee (*see* § 825.102(a)). Any leave taken prior to the date on which the rights and protections of the FMLA first became effective for the employing office from which the leave was taken may not be counted for purposes of the FMLA as made applicable by the CAA. If leave qualifying as FMLA leave was underway prior to the effective date of the FMLA for the employing office from which the leave was taken and continued after the FMLA's effective date for that office, only that portion of leave taken on or after the FMLA's effective date may be counted against the employee's leave entitlement under the FMLA, as made applicable by the CAA.

(b) If an employing office-approved leave is underway when the application of the FMLA by the CAA takes effect, no further notice would be required of the employee unless the employee requests an extension of the leave. For leave which commenced on the effective date or shortly thereafter, such notice must have been given which was practicable, considering the foreseeability of the need for leave and the effective date.

(c) Starting on January 23, 1996, an employee is entitled to FMLA leave under these regulations if the reason for the leave is qualifying under the FMLA, as made applicable by the CAA, even if the event occasioning the need for leave (*e.g.*, the birth of a child) occurred before such date (so long as any other requirements are satisfied).

§ 825.104 What employing offices are covered by these regulations?

(a) As used in the CAA, the term ''employing office'' means—

(1) the personal office of a Member of the House of Representatives or of a Senator;

(2) a committee of the House of Representatives or the Senate or a joint committee;

(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

[1] This bracketed language contains three versions of regulatory language separated by slashes: the version for the Senate and its employees, the version for the House of Representatives and its employees, and the version for Congressional instrumentalities and their employees, respectively.

(4) the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(b) The employing offices covered by the regulations in this part are:

[(1) the personal office of any Senator,

(2) any committee of the Senate, and

(3) any joint committee that employs any employee of the Senate.

(1) the personal office of any Member of the House of Representatives,

(2) any committee of the House of Representatives, and

(3) any joint committee that employs any employee of the House of Representatives.

the offices listed in paragraph (a)(4) of this section.]

(c) Separate entities will be deemed to be parts of a single employer for purposes of the FMLA, as made applicable by the CAA, if they meet the ''integrated employer'' test. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include: (i) Common management; (ii) Interrelation between operations; (iii) Centralized control of labor relations; and (iv) Degree of common financial control.

§ 825.105 [Reserved.]

§ 825.106 How is "joint employment" treated under the FMLA as made applicable by the CAA?

(a) Where two or more employing offices exercise some control over the work or working conditions of the employee, the employing offices may be joint employers under FMLA, as made applicable by the CAA. Where the employee performs work which simultaneously benefits two or more employing offices, or works for two or more employing offices at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between employing offices to share an employee's services or to interchange employees;

(2) Where one employing office acts directly or indirectly in the interest of the other employing office in relation to the employee; or

(3) Where the employing offices are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employing office controls, is controlled by, or is under common control with the other employing office.

(b) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment will ordinarily be found to exist when:

(1) an employee, who is employed by an employing office other than the personal office of a Member of the House of Representatives or of a Senator, is under the actual direction and control of the Member of the House of Representatives or Senator;

(2) two or more employing offices employ an individual to work on common issues or other matters for both or all of them; or

(3) an employing office supplies an employee on detail to another employing office.

(c)(1) In joint employment relationships, only the employing office that is the primary employer, if any, is responsible for giving required notices to its employees, providing FMLA leave, and maintenance of health benefits. Factors considered in determining which employing office is the ''primary'' employer include authority/responsibility to hire and fire, assign/place the employee, make payroll, and provide employment benefits.

(2) When an employee is jointly employed by more than one employing office, the employing offices may fulfill their responsibilities under the FMLA, as made applicable by the CAA, by arranging for these responsibilities to be performed by any one employing office or by a centralized payroll office. However, any such arrangement does not reduce any responsibilities of any of the employing offices if any of their responsibilities under the FMLA as made applicable by the CAA is not fulfilled.

(d) [Reserved.]

(e) Job restoration is the primary responsibility of the employing office that is the primary employer. The employing office that is the secondary employer is, however, responsible for accepting the employee returning from FMLA leave. An employing office that is the secondary employer is also responsible for compliance with the prohibited acts provisions with respect to its employees. The prohibited acts include prohibitions against interfering with an employee's attempt to exercise rights under the FMLA as made applicable by the CAA, or discharging or discriminating against an employee for opposing a practice which is unlawful under FMLA. An employing office that is the secondary employer will be responsible for compliance with *all* of the provisions of the FMLA, as made applicable by the CAA, with respect to its regular, permanent workforce.

§825.107 [Reserved.]

§ 825.108 [Reserved.]

§ 825.109 [Reserved.]

§ 825.110 Which employees are "eligible" to take FMLA leave under these regulations?

(a) An employee [of the Senate / of the House of Representatives / described in § 825.1(c)] is an ''eligible employee'' under these regulations if the employee has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

(b) The 12 months an employee must have been employed by any employing office need not be consecutive months. If an employee worked for two or more employing offices sequentially, the time worked will be aggregated to determine whether it equals 12 months. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (*e.g.*, workers' compensation, group health plan benefits, etc.), the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as ''at least 12 months,'' 52 weeks is deemed to be equal to 12 months.

(c) If an employee was employed by two or more employing offices, either sequentially or concurrently, the hours of service will be aggregated to determine whether the minimum of 1,250 hours has been reached. Whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work (*see* 29 C.F.R. Part 785). The determining factor is the number of hours an employee has worked for one or more employing offices. The determination is not limited by methods of record-keeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employing office. Any accurate accounting of actual hours worked may be used. For this purpose, full-time teachers (see § 825.800 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution are deemed to meet the 1,250 hour test. An employing office must be able to clearly demonstrate that such an employee did not work 1,250 hours during the previous 12 months in order to claim that the employee is not ''eligible'' for FMLA leave.

(d) The determinations of whether an employee has worked for any employing office for at least 1,250 hours in the past 12 months and has been employed by any employing office for a total of at least 12 months must be made as of the date leave commences. If an employee notifies the employing office of need for FMLA leave before the employee meets these eligibility criteria, the employing office must either confirm the employee's eligibility based upon a projection that the employee will be eligible on the date leave would commence or must advise the employee when the eligibility requirement is met. If the employing office confirms eligibility at the time the notice for leave is received, the employing office may not subsequently challenge the employee's eligibility. In the latter case, if the employing office does not advise the employee whether the employee is eligible as soon as practicable (i.e., two business days absent extenuating circumstances) after the date employee eligibility is determined, the employee will have satisfied the notice requirements and the notice of leave is considered current and outstanding until the employing office does advise. If the employing office fails to advise the employee whether the employee is eligible prior to the date the requested leave is to commence, the employee will be deemed eligible. The employing office may not, then, deny the leave. Where the employee does not give notice of the need for leave more than two business days prior to commencing leave, the employee will be deemed to be eligible if the employing office fails to advise the employee that the employee is not eligible within two business days of receiving the employee's notice.

(e) The period prior to the effective date of the application of FMLA rights and protections under the CAA must be considered in determining employee's eligibility.

(f) [Reserved.]

§ 825.111 [Reserved.]

§ 825.112 Under what kinds of circumstances are employing offices required to grant family or medical leave?

(a) Employing offices are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child;

(2) For placement with the employee of a son or daughter for adoption or foster care;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

(b) The right to take leave under FMLA as made applicable by the CAA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption or foster care of a child.

(c) Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave pursuant to paragraph (a)(4) of this section before the birth of the child for prenatal care or if her condition makes her unable to work.

(d) Employing offices are required to grant FMLA leave pursuant to paragraph (a)(2) of

this section before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, or submit to a physical examination. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(e) Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(f) In situations where the employer/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

(g) FMLA leave is available for treatment for substance abuse provided the conditions of § 825.114 are met. However, treatment for substance abuse does not prevent an employing office from taking employment action against an employee. The employing office may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment. However, if the employing office has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for an immediate family member who is receiving treatment for substance abuse. The employing office may not take action against an employee who is providing care for an immediate family member receiving treatment for substance abuse.

§ 825.113 What do "spouse," "parent," and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?

(a) Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

(b) Parent means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter as defined in (c) below. This term does not include parents "in law".

(c) Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis,* who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability."

(1) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 C.F.R. § 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.* define these terms.

(3) Persons who are *"in loco parentis"* include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(d) For purposes of confirmation of family relationship, the employing office may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, *etc.* The employing office is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

§ 825.114 What is a "serious health condition" entitling an employee to FMLA leave?

(a) For purposes of FMLA, "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

(1) *Inpatient care* (*i.e.,* an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of *incapacity* (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(2) *Continuing treatment* by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(i) A period of *incapacity* (*i.e.,* inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(ii) Any period of incapacity due to pregnancy, or for prenatal care.

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(A) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(B) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(C) May cause episodic rather than a continuing period of incapacity (*e.g.,* asthma, diabetes, epilepsy, etc.).

(iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(v) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), kidney disease (dialysis).

(b) Treatment for purposes of paragraph (a) of this section includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (a)(2)(i)(B), a regimen of continuing treatment includes, for example, a course of prescription medication (*e.g.,* an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (*e.g.,* oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(c) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, *etc.,* are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(e) Absences attributable to incapacity under paragraphs (a)(2) (ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's

health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

§ 825.115 What does it mean that "the employee is unable to perform the functions of the position of the employee"?

An employee is ''unable to perform the functions of the position'' where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, and the regulations at 29 C.F.R. §1630.2(n)). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. An employing office has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier.

§ 825.116 What does it mean that an employee is "needed to care for" a family member?

(a) The medical certification provision that an employee is ''needed to care for'' a family member encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member includes not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently—such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

§ 825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?

For intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition (*see* §825.306) meets the requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employing office's operations. In addition, an employing office may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

§ 825.118 What is a "health care provider"?

(a)(1) The term ''health care provider'' means:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) Any other person determined by the Office of Compliance to be capable of providing health care services.

(2) In making a determination referred to in subparagraph (1)(ii), and absent good cause shown to do otherwise, the Office of Compliance will follow any determination made by the Secretary of Labor (under section 101(6)(B) of the FMLA) that a person is capable of providing health care services, provided the Secretary's determination was not made at the request of a person who was then a covered employee.

(b) Others ''capable of providing health care services'' include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

(4) Any health care provider from whom an employing office or the employing office's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(c) The phrase ''authorized to practice in the State'' as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other health care provider.

SUBPART B—WHAT LEAVE IS AN EMPLOYEE ENTITLED TO TAKE UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT?

§ 825.200 How much leave may an employee take?

(a) An eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and,

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.

(b) An employing office is permitted to choose any one of the following methods for determining the ''12-month period'' in which the 12 weeks of leave entitlement occurs:

(1) The calendar year;

(2) Any fixed 12-month ''leave year,'' such as a fiscal year, a year required by State law, or a year starting on an employee's ''anniversary'' date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave begins; or,

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the ''rolling'' 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 1997, four weeks beginning June 1, 1997, and four weeks beginning December 1, 1997, the employee would not be entitled to any additional leave until February 1, 1998. However, beginning on February 1, 1998, the employee would be entitled to four weeks of leave, on June 1 the employee would be entitled to an additional four weeks, *etc.*

(d)(1) Employing offices will be allowed to choose any one of the alternatives in paragraph (b) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employing office wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the CAA's FMLA leave requirements.

(2) [Reserved.]

(e) If an employing office fails to select one of the options in paragraph (b) of this section for measuring the 12-month period, the option that provides the most beneficial outcome for the employee will be used. The employing office may subsequently select an option only by providing the 60-day notice to all employees of the option the employing office intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employing office may implement the selected option.

(f) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if for some reason the employing office's activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing

two weeks for the Christmas/New Year holiday or the summer vacation or an employing office closing the office for repairs), the days the employing office's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in § 825.205.

§ 825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement, unless the employing office permits leave to be taken for a longer period. Any such FMLA leave must be concluded within this one-year period.

§ 825.202 How much leave may a husband and wife take if they are employed by the same employing office?

(a) A husband and wife who are eligible for FMLA leave and are employed by the same employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken:

(1) for birth of the employee's son or daughter or to care for the child after birth;

(2) for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or

(3) to care for the employee's parent with a serious health condition.

(b) This limitation on the total weeks of leave applies to leave taken for the reasons specified in paragraph (a) of this section as long as a husband and wife are employed by the ''same employing office.'' It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave.

(c) Where the husband and wife both use a portion of the total 12-week FMLA leave entitlement for one of the purposes in paragraph (a) of this section, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for a purpose other than those contained in paragraph (a) of this section. For example, if each spouse took 6 weeks of leave to care for a healthy, newborn child, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition.

§ 825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?

(a) FMLA leave may be taken ''intermittently or on a reduced leave schedule'' under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employing office agrees. Such a schedule reduction might occur, for example, where an employee, with the employing office's agreement, works part-time after the birth of a child, or takes leave in several segments. The employing office's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

(c) Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

(1) Intermittent leave may be taken for a serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

(d) There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employing office may limit leave increments to the shortest period of time that the employing office's payroll system uses to account for absences or use of leave, provided it is one hour or less. For example, an employee might take two hours off for a medical appointment, or might work a reduced day of four hours over a period of several weeks while recuperating from an illness. An employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave, except as provided in §§ 825.601 and 825.602.

§ 825.204 May an employing office transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?

(a) If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition, or if the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. See § 825.601 for special rules applicable to instructional employees of schools.

(b) Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, and federal law (such as the Americans with Disabilities Act). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.

(c) The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employing office may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employing office may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employing office may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employing office may proportionately reduce benefits such as vacation leave where an employing office's normal practice is to base such benefits on the number of hours worked.

(d) An employing office may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employing office to make such a transfer will be held to be contrary to the prohibited-acts provisions of the FMLA, as made applicable by the CAA.

(e) When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he/she left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

§ 825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?

(a) If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. For example, if an employee who normally works five days a week takes off one day, the employee would use 1/5 of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use 1/2 week of FMLA leave each week.

(b) Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee who normally works 30 hours per week works only 20 hours a week under a reduced leave schedule, the employee's ten hours of leave would constitute one-third of a week of FMLA leave for each week the employee works the reduced leave schedule.

(c) If an employing office has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA

leave), the hours worked under the new schedule are to be used for making this calculation.

(d) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.

§ 825.206 May an employing office deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, as made applicable by the CAA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee, or when utilizing the fluctuating workweek method for payment of overtime, under the Fair Labor Standards Act?

(a) Leave taken under FMLA as made applicable by the CAA may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) as a salaried executive, administrative, or professional employee under regulations issued by the Board at [CAA regulations based on 29 CFR Part 541], providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employing office may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. The fact that an employing office provides FMLA leave, whether paid or unpaid, will not be relevant to the determination whether an employee is exempt within the meaning of [CAA regulations based on 29 CFR Part 541].

(b) For an employee paid in accordance with the fluctuating workweek method of payment for overtime (*see* 29 CFR 778.114), the employing office, *during the period* in which intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours. The change to payment on an hourly basis would include the entire period during which the employee is taking intermittent leave, including weeks in which no leave is taken. The hourly rate shall be determined by dividing the employee's weekly salary by the employee's normal or average schedule of hours worked during weeks in which FMLA leave is not being taken. If an employing office chooses to follow this exception from the fluctuating workweek method of payment, the employing office must do so uniformly, with respect to all employees paid on a fluctuating workweek basis for whom FMLA leave is taken on an intermittent or reduced leave schedule basis. If an employing office does not elect to convert the employee's compensation to hourly pay, no deduction may be taken for FMLA leave absences. Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating work week basis.

(c) This special exception to the salary basis'' requirements of the FLSA exemption or fluctuating workweek payment requirements applies only to employees of covered employing offices who are eligible for FMLA leave, and to leave which qualifies as (one of the four types of) FMLA leave. Hourly or other deductions which are not in accordance with [CAA regulations based on 29 CFR Part 541] or 29 CFR § 778.114 may not be taken, for example, where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption. Nor may deductions which are not permitted by [CAA regulations based on 29 CFR Part 541] or 29 CFR § 778.114 be taken from such an employee's salary for any leave which does not qualify as FMLA leave, for example, deductions from an employee's pay for leave required under an employing office's policy or practice for a reason which does not qualify as FMLA leave, e.g., leave to care for a grandparent or for a medical condition which does not qualify as a serious health condition; or for leave which is more generous than provided by FMLA as made applicable by the CAA, such as leave in excess of 12 weeks in a year. The employing office may comply with the employing office's own policy/practice under these circumstances and maintain the employee's eligibility for exemption or for the fluctuating workweek method of pay by not taking hourly deductions from the employee's pay, in accordance with FLSA requirements, or may take such deductions, treating the employee as an ''hourly'' employee and pay overtime premium pay for hours worked over 40 in a workweek.

§ 825.207 Is FMLA leave paid or unpaid?

(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA, as made applicable by the CAA, permits an eligible employee to choose to substitute paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employing office may require the employee to substitute accrued paid leave for FMLA leave.

(b) Where an employee has earned or accrued paid vacation, personal or family leave, that paid leave may be substituted for all or part of any (otherwise) unpaid FMLA leave relating to birth, placement of a child for adoption or foster care, or care for a spouse, child or parent who has a serious health condition. The term ''family leave'' as used in FMLA refers to paid leave provided by the employing office covering the particular circumstances for which the employee seeks leave for either the birth of a child and to care for such child, placement of a child for adoption or foster care, or care for a spouse, child or parent with a serious health condition. For example, if the employing office's leave plan allows use of family leave to care for a child but not for a parent, the employing office is not required to allow accrued family leave to be substituted for FMLA leave used to care for a parent.

(c) Substitution of paid accrued vacation, personal, or medical/sick leave may be made for any (otherwise) unpaid FMLA leave needed to care for a family member or the employee's own serious health condition. Substitution of paid sick/medical leave may be elected to the extent the circumstances meet the employing office's usual requirements for the use of sick/medical leave. An employing office is not required to allow substitution of paid sick or medical leave for unpaid FMLA leave ''in any situation'' where the employing office's uniform policy would not normally allow such paid leave. An employee, therefore, has a right to substitute paid medical/sick leave to care for a seriously ill family member only if the employing office's leave plan allows paid leave to be used for that purpose. Similarly, an employee does not have a right to substitute paid medical/sick leave for a serious health condition which is not covered by the employing office's leave plan.

(d)(1) Disability leave for the birth of a child would be considered FMLA leave for a serious health condition and counted in the 12 weeks of leave permitted under FMLA as made applicable by the CAA. Because the leave pursuant to a temporary disability benefit plan is not unpaid, the provision for substitution of paid leave is inapplicable. However, the employing office may designate the leave as FMLA leave and count the leave as running concurrently for purposes of both the benefit plan and the FMLA leave entitlement. If the requirements to qualify for payments pursuant to the employing office's temporary disability plan are more stringent than those of FMLA as made applicable by the CAA, the employee must meet the more stringent requirements of the plan, or may choose not to meet the requirements of the plan and instead receive no payments from the plan and use unpaid FMLA leave or substitute available accrued paid leave.

(2) The FMLA as made applicable by the CAA provides that a serious health condition may result from injury to the employee ''on or off'' the job. If the employing office designates the leave as FMLA leave in accordance with § 825.208, the employee's FMLA 12-week leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. As the workers' compensation absence is not unpaid leave, the provision for substitution of the employee's accrued paid leave is not applicable. However, if the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a ''light duty job'' but is unable to return to the same or equivalent job, the employee may decline the employing office's offer of a ''light duty job''. As a result the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the 12-week entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employing office may require the use of accrued paid leave. See also §§ 825.210(f), 825.216(d), 825.220(d), 825.307(a)(1) and 825.702 (d)(1) and (2) regarding the relationship between workers' compensation absences and FMLA leave.

(e) Paid vacation or personal leave, including leave earned or accrued under plans allowing ''paid time off,'' may be substituted, at either the employee's or the employing office's option, for any qualified FMLA leave. No limitations may be placed by the employing office on substitution of paid vacation or personal leave for these purposes.

(f) If neither the employee nor the employing office elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employing office's plan.

(g) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the 12 weeks of FMLA leave to which the employee is entitled. For example, paid sick leave used for a medical condition which is not a serious health condition does not count against the 12 weeks of FMLA leave entitlement.

(h) When an employee or employing office elects to substitute paid leave (of any type) for unpaid FMLA leave under circumstances permitted by these regulations, and the employing office's procedural requirements for taking that kind of leave are less stringent than the requirements of FMLA as made applicable by the CAA (e.g., notice or certification requirements), only the less stringent requirements may be imposed. An employee who complies with an employing office's less

stringent leave plan requirements in such cases may not have leave for an FMLA purpose delayed or denied on the grounds that the employee has not complied with stricter requirements of FMLA as made applicable by the CAA. However, where accrued paid vacation or personal leave is substituted for unpaid FMLA leave for a serious health condition, an employee may be required to comply with any less stringent medical certification requirements of the employing office's sick leave program. See §§825.302(g), 825.305(e) and 825.306(c).

(i) Compensatory time off, if any is authorized under applicable law, is not a form of accrued paid leave that an employing office may require the employee to substitute for unpaid FMLA leave. The employee may request to use his/her balance of compensatory time for an FMLA reason. If the employing office permits the accrual to be used in compliance with regulations, if any [CAA regulations on compensatory time off, if any], the absence which is paid from the employee's accrued compensatory time ''account'' may not be counted against the employee's FMLA leave entitlement.

§825.208 Under what circumstances may an employing office designate leave, paid or unpaid, as FMLA leave and, as a result, enable leave to be counted against the employee's total FMLA leave entitlement?

(a) In all circumstances, it is the employing office's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee as provided in this section. In the case of intermittent leave or leave on a reduced schedule, only one such notice is required unless the circumstances regarding the leave have changed. The employing office's designation decision must be based only on information received from the employee or the employee's spokesperson (e.g., if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc., may provide notice to the employing office of the need to take FMLA leave). In any circumstance where the employing office does not have sufficient information about the reason for an employee's use of paid leave, the employing office should inquire further of the employee or the spokesperson to ascertain whether the paid leave is potentially FMLA-qualifying.

(1) An employee giving notice of the need for unpaid FMLA leave must explain the reasons for the needed leave so as to allow the employing office to determine that the leave qualifies under the FMLA, as made applicable by the CAA. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use paid leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employing office to designate the paid leave as FMLA leave. An employee using accrued paid leave, especially vacation or personal leave, may in some cases not spontaneously explain the reasons or their plans for using their accrued leave.

(2) As noted in §825.302(c), an employee giving notice of the need for unpaid FMLA leave does not need to expressly assert rights under the FMLA as made applicable by the CAA or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave. An employee requesting or notifying the employing office of an intent to use accrued paid leave, even if for a purpose covered by FMLA, would not need to assert such right either. However, if an employee requesting to use paid leave for an FMLA-qualifying purpose does not explain the reason for the leave—consistent with the employing office's established policy or practice—and the employing office denies the employee's request, the employee will need to provide sufficient information to establish an FMLA-qualifying reason for the needed leave so that the employing office is aware of the employee's entitlement (i.e., that the leave may not be denied) and, then, may designate that the paid leave be appropriately counted against (substituted for) the employee's 12-week entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for an FMLA-qualifying purpose will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employing office may count the leave used after the FMLA-qualifying event against the employee's 12-week entitlement.

(b)(1) Once the employing office has acquired knowledge that the leave is being taken for an FMLA required reason, the employing office must promptly (within two business days absent extenuating circumstances) notify the employee that the paid leave is designated and will be counted as FMLA leave. If there is a dispute between an employing office and an employee as to whether paid leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employing office. Such discussions and the decision must be documented.

(2) The employing office's notice to the employee that the leave has been designated as FMLA leave may be orally or in writing. If the notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). The written notice may be in any form, including a notation on the employee's pay stub.

(c) If the employing office requires paid leave to be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, this decision must be made by the employing office within two business days of the time the employee gives notice of the need for leave, or, where the employing office does not initially have sufficient information to make a determination, when the employing office determines that the leave qualifies as FMLA leave if this happens later. The employing office's designation must be made before the leave starts, unless the employing office does not have sufficient information as to the employee's reason for taking the leave until after the leave commenced. If the employing office has the requisite knowledge to make a determination that the paid leave is for an FMLA reason at the time the employee either gives notice of the need for leave or commences leave and fails to designate the leave as FMLA leave (and so notify the employee in accordance with paragraph (b)), the employing office may not designate leave as FMLA leave retroactively, and may designate only prospectively as of the date of notification to the employee of the designation. In such circumstances, the employee is subject to the full protections of the FMLA, as made applicable by the CAA, but none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement.

(d) If the employing office learns that leave is for an FMLA purpose after leave has begun, such as when an employee gives notice of the need for an extension of the paid leave with unpaid FMLA leave, the entire or some portion of the paid leave period may be retroactively counted as FMLA leave, to the extent that the leave period qualified as FMLA leave. For example, an employee is granted two weeks paid vacation leave for a skiing trip. In mid-week of the second week, the employee contacts the employing office for an extension of leave as unpaid leave and advises that at the beginning of the second week of paid vacation leave the employee suffered a severe accident requiring hospitalization. The employing office may notify the employee that both the extension and the second week of paid vacation leave (from the date of the injury) is designated as FMLA leave. On the other hand, when the employee takes sick leave that turns into a serious health condition (e.g., bronchitis that turns into bronchial pneumonia) and the employee gives notice of the need for an extension of leave, the entire period of the serious health condition may be counted as FMLA leave.

(e) Employing offices may not designate leave as FMLA leave after the employee has returned to work with two exceptions:

(1) If the employee was absent for an FMLA reason and the employing office did not learn the reason for the absence until the employee's return (e.g., where the employee was absent for only a brief period), the employing office may, upon the employee's return to work, promptly (within two business days of the employee's return to work) designate the leave retroactively with appropriate notice to the employee. If leave is taken for an FMLA reason but the employing office was not aware of the reason, and the employee desires that the leave be counted as FMLA leave, the employee must notify the employing office within two business days of returning to work of the reason for the leave. In the absence of such timely notification by the employee, the employee may not subsequently assert FMLA protections for the absence.

(2) If the employing office knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or where the employing office has requested medical certification which has not yet been received or the parties are in the process of obtaining a second or third medical opinion, the employing office should make a preliminary designation, and so notify the employee, at the time leave begins, or as soon as the reason for the leave becomes known. Upon receipt of the requisite information from the employee or of the medical certification which confirms the leave is for an FMLA reason, the preliminary designation becomes final. If the medical certifications fail to confirm that the reason for the absence was an FMLA reason, the employing office must withdraw the designation (with written notice to the employee).

(f) If, before beginning employment with an employing office, an employee had been employed by another employing office, the subsequent employing office may count against the employee's FMLA leave entitlement FMLA leave taken from the prior employing office, except that, if the FMLA leave began after the effective date of these regulations (or if the FMLA leave was subject to other applicable requirement under which the employing office was to have designated the leave as FMLA leave), the prior employing office must have properly designated the leave as FMLA under these regulations or other applicable requirement.

§825.209 Is an employee entitled to benefits while using FMLA leave?

(a) During any FMLA leave, the employing office must maintain the employee's coverage under the Federal Employees Health Benefits Program or any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided

if the employee had been continuously employed during the entire leave period. All employing offices are subject to the requirements of the FMLA, as made applicable by the CAA, to maintain health coverage. The definition of ''group health plan'' is set forth in § 825.800. For purposes of FMLA, the term ''group health plan'' shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) no contributions are made by the employing office;

(2) participation in the program is completely voluntary for employees;

(3) the sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) the employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(5) the premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc., must be maintained during leave if provided in an employing office's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) If an employing office provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employing office changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage. Any other plan changes (e.g., in coverage, premiums, deductibles, etc.) which apply to all employees of the workforce would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employing office.

(e) An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc. See § 825.212(c).

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), or by other applicable law, and for ''key'' employees (as discussed below), an employing office's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (e.g., if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employing office of his or her intent not to return from leave (including before starting the leave if the employing office is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

(g) If a ''key employee'' (see § 825.218) does not return from leave when notified by the employing office that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employing office that the employee does not desire restoration to employment at the end of the leave period, or FMLA leave entitlement is exhausted, or reinstatement is actually denied.

(h) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employing office's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

§ 825.210 How may employees on FMLA leave pay their share of group health benefit premiums?

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employing office's group health plan, as described in § 825.209(a)(1), are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employing office has a number of options for obtaining payment from the employee. The employing office may require that payment be made to the employing office or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employing office may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employing office's existing rules for payment by employees on ''leave without pay'' would be followed, provided that such rules do not require prepayment (i.e., prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or,

(5) Another system voluntarily agreed to between the employing office and the employee, which may include prepayment of premiums (e.g., through increased payroll deductions when the need for the FMLA leave is foreseeable).

(d) The employing office must provide the employee with advance written notice of the terms and conditions under which these payments must be made. (See § 825.301.)

(e) An employing office may not require more of an employee using FMLA leave than the employing office requires of other employees on ''leave without pay''.

(f) An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employing office for payment of group health plan benefits when simultaneously taking unpaid FMLA leave. See paragraph (c) of this section and § 825.207(d)(2).

§ 825.211 [Reserved.]

§ 825.212 What are the consequences of an employee's failure to make timely health plan premium payments?

(a)(1) In the absence of an established employing office policy providing a longer grace period, an employing office's obligations to maintain health insurance coverage cease under FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employing office must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employing office has established policies regarding other forms of unpaid leave that provide for the employing office to cease coverage retroactively to the date the unpaid premium payment was due, the employing office may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

(2) An employing office has no obligation regarding the maintenance of a health insurance policy which is not a ''group health plan.'' See § 825.209(a).

(3) All other obligations of an employing office under FMLA would continue; for example, the employing office continues to have an obligation to reinstate an employee upon return from leave.

(b) The employing office may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employing office maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employing office must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. See § 825.215(d)(1)–(5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to

pass a medical examination to obtain reinstatement of coverage.

§ 825.213 May an employing office recover costs it incurred for maintaining "group health plan" or other non-health benefits coverage during FMLA leave?

(a) In addition to the circumstances discussed in § 825.212(b), an employing office may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member which would otherwise entitle the employee to leave under FMLA; or

(2) Other circumstances beyond the employee's control. Examples of ''other circumstances beyond the employee's control'' are necessarily broad. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a key employee'' who decides not to return to work upon being notified of the employing office's intention to deny restoration because of substantial and grievous economic injury to the employing office's operations and is not reinstated by the employing office. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child.

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of a serious health condition, thereby precluding the employing office from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition. Such certification is not required unless requested by the employing office. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employing office's request. For purposes of medical certification, the employee may use the optional form developed for this purpose (see § 825.306(a) and Appendix B of this part). If the employing office requests medical certification and the employee does not provide such certification in a timely manner (within 30 days), or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employing office may recover 100% of the health benefit premiums it paid during the period of unpaid FMLA leave.

(b) Under some circumstances an employing office may elect to maintain other benefits, e.g., life insurance, disability insurance, etc., by paying the employee's (share of) premiums during periods of unpaid FMLA leave. For example, to ensure the employing office can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employing office elects to maintain such benefits during the leave, at the conclusion of leave, the employing office is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) An employee who returns to work for at least 30 calendar days is considered to have ''returned'' to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

(d) When an employee elects or an employing office requires paid leave to be substituted for FMLA leave, the employing office may not recover its (share of) health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave. Because paid leave provided under a plan covering temporary disabilities (including workers' compensation) is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) The amount that self-insured employing offices may recover is limited to only the employing office's share of allowable ''premiums'' as would be calculated under COBRA, excluding the 2 percent fee for administrative costs.

(f) When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employing office to recover are a debt owed by the non-returning employee to the employing office. The existence of this debt caused by the employee's failure to return to work does not alter the employing office's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. To the extent recovery is allowed, the employing office may recover the costs through deduction from any sums due to the employee (e.g., unpaid wages, vacation pay, etc.), provided such deductions do not otherwise violate applicable wage payment or other laws. Alternatively, the employing office may initiate legal action against the employee to recover such costs.

§ 825.214 What are an employee's rights on returning to work from FMLA leave?

(a) On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. See also § 825.106(e) for the obligations of employing offices that are joint employing offices.

(b) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the employing office's obligations may be governed by the Americans with Disabilities Act (ADA). See § 825.702.

§ 825.215 What is an equivalent position?

(a) An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(b) If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) *Equivalent Pay.*—(1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed would not have to be granted unless it is the employing office's policy or practice to do so with respect to other employees on ''leave without pay.'' In such case, any pay increase would be granted based on the employee's seniority, length of service, work performed, etc., excluding the period of unpaid FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Many employing offices pay bonuses in different forms to employees for job-related performance such as for perfect attendance, safety (absence of injuries or accidents on the job) and exceeding production goals. Bonuses for perfect attendance and safety do not require performance by the employee but rather contemplate the absence of occurrences. To the extent an employee who takes FMLA leave had met all the requirements for either or both of these bonuses before FMLA leave began, the employee is entitled to continue this entitlement upon return from FMLA leave, that is, the employee may not be disqualified for the bonus(es) for the taking of FMLA leave. See § 825.220 (b) and (c). A monthly production bonus, on the other hand, does require performance by the employee. If the employee is on FMLA leave during any part of the period for which the bonus is computed, the employee is entitled to the same consideration for the bonus as other employees on paid or unpaid leave (as appropriate). See paragraph (d)(2) of this section.

(d) *Equivalent Benefits.*—''Benefits'' include all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office through an employee benefit plan.

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began (including family or dependent coverages). For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employing offices may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave. See § 825.213(b).

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, however, (e.g., paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employing office is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employing office has no established policy, the employee and the employing office are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. For example if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. (In this regard, § 825.209 addresses health benefits.)

(e) *Equivalent Terms and Conditions of Employment.*—An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employing office transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employing office from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employing office to accept a different position against the employee's wishes.

(f) The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to de minimis or intangible, unmeasurable aspects of the job. However, restoration to a job slated for lay-off when the employee's original position is not would not meet the requirements of an equivalent position.

§ 825.216 Are there any limitations on an employing office's obligation to reinstate an employee?

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employing office must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example;

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employing office's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee cease at the time the employee is laid off, provided the employing office has no continuing obligations under a collective bargaining agreement or otherwise. An employing office would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(b) If an employee was hired for a specific term or only to perform work on a discrete project, the employing office has no obligation to restore the employee if the employment term or project is over and the employing office would not otherwise have continued to employ the employee.

(c) In addition to the circumstances explained above, an employing office may deny job restoration to salaried eligible employees (''key employees,'' as defined in paragraph (c) of § 825.217) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employing office; or may delay restoration to an employee who fails to provide a fitness for duty certificate to return to work under the conditions described in § 825.310.

(d) If the employee has been on a workers' compensation absence during which FMLA leave has been taken concurrently, and after 12 weeks of FMLA leave the employee is unable to return to work, the employee no longer has the protections of FMLA and must look to the workers' compensation statute or ADA for any relief or protections.

§ 825.217 What is a "key employee"?

(a) A ''key employee'' is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite.

(b) The term ''salaried'' means ''paid on a salary basis,'' as defined in [CAA regulation based on 29 CFR 541.118]. This is the regulation defining employees who may qualify as exempt from the minimum wage and overtime requirements of the FLSA as executive, administrative, and professional employees.

(c) A ''key employee'' must be ''among the highest paid 10 percent'' of all the employees—both salaried and non-salaried, eligible and ineligible—who are employed by the employing office within 75 miles of the worksite.

(1) In determining which employees are among the highest paid 10 percent, year-to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, *e.g.*, benefits or perquisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employing office's employees within 75 miles of the worksite may be ''key employees.''

§ 825.218 What does "substantial and grievous economic injury" mean?

(a) In order to deny restoration to a key employee, an employing office must determine that the restoration of the employee to employment will cause ''substantial and grievous economic injury'' to the operations of the employing office, not whether the absence of the employee will cause such substantial and grievous injury.

(b) An employing office may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the employing office of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employing office which must be sustained. If the reinstatement of a ''key employee'' threatens the economic viability of the employing office, that would constitute ''substantial and grievous economic injury.'' A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employing office would experience in the normal course would certainly not constitute ''substantial and grievous economic injury.''

(d) FMLA's ''substantial and grievous economic injury'' standard is different from and more stringent than the ''undue hardship'' test under the ADA (see, also § 825.702).

§ 825.219 What are the rights of a key employee?

(a) An employing office who believes that reinstatement may be denied to a key employee, must give written notice to the employee at the time the employee gives notice of the need for FMLA leave (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employing office must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employing office should determine that substantial and grievous economic injury to the employing office's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and, therefore, there would be no need to provide such notice. However, an employing office who fails to provide such timely notice will lose its right to deny restoration even if substantial

and grievous economic injury will result from reinstatement.

(b) As soon as an employing office makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is using FMLA leave is reinstated, the employing office shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. It is anticipated that an employing office will ordinarily be able to give such notice prior to the employee starting leave. The employing office must serve this notice either in person or by certified mail. This notice must explain the basis for the employing office's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work in response to the employing office's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employing office may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until the employee either gives notice that he or she no longer wishes to return to work, or the employing office actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employing office's notice. The employing office must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employing office shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

§ 825.220 How are employees protected who request leave or otherwise assert FMLA rights?

(a) The FMLA, as made applicable by the CAA, prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employing office is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA as made applicable by the CAA.

(2) An employing office is prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) for opposing or complaining about any unlawful practice under the FMLA as made applicable by the CAA.

(3) All employing offices are prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) because that covered employee has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to the FMLA, as made applicable by the CAA;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA.

(b) Any violations of the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA as made applicable by the CAA. ''Interfering with'' the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by an employing office to avoid responsibilities under FMLA, for example:

(1) [Reserved];

(2) changing the essential functions of the job in order to preclude the taking of leave;

(3) reducing hours available to work in order to avoid employee eligibility.

(c) An employing office is prohibited from discriminating against employees or prospective employees who have used FMLA leave. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employing offices cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under ''no fault'' attendance policies.

(d) Employees cannot waive, nor may employing offices induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot ''trade off'' the right to take FMLA leave against some other benefit offered by the employing office. This does not prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a ''light duty'' assignment while recovering from a serious health condition (see § 825.702(d)). In such a circumstance the employee's right to restoration to the same or an equivalent position is available until 12 weeks have passed within the 12-month period, including all FMLA leave taken and the period of ''light duty.''

(e) Covered employees, and not merely eligible employees, are protected from retaliation for opposing (e.g., filing a complaint about) any practice which is unlawful under the FMLA, as made applicable by the CAA. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the FMLA, as made applicable by the CAA or regulations.

SUBPART C—HOW DO EMPLOYEES LEARN OF THEIR RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA, AND WHAT CAN AN EMPLOYING OFFICE REQUIRE OF AN EMPLOYEE?

§ 825.300 [Reserved.]

§ 825.301 What notices to employees are required of employing offices under the FMLA as made applicable by the CAA?

(a)(1) If an employing office has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning both entitlements and employee obligations under the FMLA, as made applicable by the CAA, must be included in the handbook or other document. For example, if an employing office provides an employee handbook to all employees that describes the employing office's policies regarding leave, wages, attendance, and similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employing office's policies regarding the FMLA, as made applicable by the CAA. Informational publications describing the provisions of the FMLA as made applicable by the CAA are available from the Office of Compliance and may be incorporated in such employing office handbooks or written policies.

(2) If such an employing office does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employing office shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA as made applicable by the CAA. This notice shall be provided to employees each time notice is given pursuant to paragraph (b), and in accordance with the provisions of that paragraph. Employing offices may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the Office of Compliance to provide such guidance.

(b)(1) The employing office shall also provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The written notice must be provided to the employee in a language in which the employee is literate (see § 825.300(c)). Such specific notice must include, as appropriate:

(i) that the leave will be counted against the employee's annual FMLA leave entitlement (see § 825.208);

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so (see § 825.305);

(iii) the employee's right to substitute paid leave and whether the employing office will require the substitution of paid leave, and the conditions related to any substitution;

(iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (see § 825.210), and the possible consequences of failure to make such payments on a timely basis (i.e., the circumstances under which coverage may lapse);

(v) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment (see § 825.310);

(vi) the employee's status as a ''key employee'' and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (see § 825.218);

(vii) the employee's right to restoration to the same or an equivalent job upon return from leave (see §§ 825.214 and 825.604); and,

(viii) the employee's potential liability for payment of health insurance premiums paid by the employing office during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (see § 825.213).

(2) The specific notice may include other information—e.g., whether the employing office will require periodic reports of the employee's status and intent to return to work, but is not required to do so. A prototype notice is contained in Appendix D of this part [reserved], or may be obtained from the Office of Compliance, which employing offices may adapt for their use to meet these specific notice requirements.

(c) Except as provided in this subparagraph, the written notice required by paragraph (b) (and by subparagraph (a)(2) where applicable) must be provided to the employee no less often than the first time in each six-month period that an employee gives notice of the need for FMLA leave (if FMLA leave is taken during the six-month period). The notice shall be given within a reasonable time after notice of the need for leave is given by the employee—within one or two

business days if feasible. If leave has already begun, the notice should be mailed to the employee's address of record.

(1) If the specific information provided by the notice changes with respect to a subsequent period of FMLA leave during the six-month period, the employing office shall, within one or two business days of receipt of the employee's notice of need for leave, provide written notice referencing the prior notice and setting forth any of the information in subparagraph (b) which has changed. For example, if the initial leave period were paid leave and the subsequent leave period would be unpaid leave, the employing office may need to give notice of the arrangements for making premium payments.

(2)(i) Except as provided in subparagraph (ii), if the employing office is requiring medical certification or a ''fitness-for-duty'' report, written notice of the requirement shall be given with respect to each employee notice of a need for leave.

(ii) Subsequent written notification shall not be required if the initial notice in the six-month period and the employing office handbook or other written documents (if any) describing the employing office's leave policies, clearly provided that certification or a ''fitness-for-duty'' report would be required (e.g., by stating that certification would be required in all cases, by stating that certification would be required in all cases in which leave of more than a specified number of days is taken, or by stating that a ''fitness-for-duty'' report would be required in all cases for back injuries for employees in a certain occupation). Where subsequent written notice is not required, at least oral notice shall be provided. (See § 825.305(a).)

(d) Employing offices are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA as made applicable under the CAA.

(e) Employing offices furnishing FMLA-required notices to sensory impaired individuals must also comply with all applicable requirements under law.

(f) If an employing office fails to provide notice in accordance with the provisions of this section, the employing office may not take action against an employee for failure to comply with any provision required to be set forth in the notice.

§ 825.302 What notice does an employee have to give an employing office when the need for FMLA leave is foreseeable?

(a) An employee must provide the employing office at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. Whether the leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employing office as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

(b) ''As soon as practicable'' means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as 30 days notice, ''as soon as practicable'' ordinarily would mean at least verbal notification to the employing office within one or two business days of when the need for leave becomes known to the employee.

(c) An employee shall provide at least verbal notice sufficient to make the employing office aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA as made applicable by the CAA, or even mention the FMLA, but may only state that leave is needed for an expected birth or adoption, for example. The employing office should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employing office may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave (see § 825.305).

(d) An employing office may also require an employee to comply with the employing office's usual and customary notice and procedural requirements for requesting leave. For example, an employing office may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. However, failure to follow such internal employing office procedures will not permit an employing office to disallow or delay an employee's taking FMLA leave if the employee gives timely verbal or other notice.

(e) When planning medical treatment, the employee must consult with the employing office and make a reasonable effort to schedule the leave so as not to disrupt unduly the employing office's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employing offices prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employing office and the employee. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employing office to make a reasonable attempt to arrange the schedule of treatments so as not to unduly disrupt the employing office's operations, the employing office may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider.

(f) In the case of intermittent leave or leave on a reduced leave schedule which is medically necessary, an employee shall advise the employing office, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employing office shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the employing office's operations, subject to the approval of the health care provider.

(g) An employing office may waive employees' FMLA notice requirements. In addition, an employing office may not require compliance with stricter FMLA notice requirements where the provisions of a collective bargaining agreement or applicable leave plan allow less advance notice to the employing office. For example, if an employee (or employing office) elects to substitute paid vacation leave for unpaid FMLA leave (see § 825.207), and the employing office's paid vacation leave plan imposes no prior notification requirements for taking such vacation leave, no advance notice may be required for the FMLA leave taken in these circumstances. On the other hand, FMLA notice requirements would apply to a period of unpaid FMLA leave, unless the employing office imposes lesser notice requirements on employees taking leave without pay.

§ 825.303 What are the requirements for an employee to furnish notice to an employing office where the need for FMLA leave is not foreseeable?

(a) When the approximate timing of the need for leave is not foreseeable, an employee should give notice to the employing office of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case. It is expected that an employee will give notice to the employing office within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. In the case of a medical emergency requiring leave because of an employee's own serious health condition or to care for a family member with a serious health condition, written advance notice pursuant to an employing office's internal rules and procedures may not be required when FMLA leave is involved.

(b) The employee should provide notice to the employing office either in person or by telephone, telegraph, facsimile (''fax'') machine or other electronic means. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member or other responsible party) if the employee is unable to do so personally. The employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA, but may only state that leave is needed. The employing office will be expected to obtain any additional required information through informal means. The employee or spokesperson will be expected to provide more information when it can readily be accomplished as a practical matter, taking into consideration the exigencies of the situation.

§ 825.304 What recourse do employing offices have if employees fail to provide the required notice?

(a) An employing office may waive employees' FMLA notice obligations or the employing office's own internal rules on leave notice requirements.

(b) If an employee fails to give 30 days notice for foreseeable leave with no reasonable excuse for the delay, the employing office may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice to the employing office of the need for FMLA leave.

(c) In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employing office's proper posting, at the worksite where the employee is employed, of the information regarding the FMLA provided (pursuant to section 301(h)(2) of the CAA) by the Office of Compliance to the employing office in a manner suitable for posting. Furthermore, the need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient.

§ 825.305 When must an employee provide medical certification to support FMLA leave?

(a) An employing office may require that an employee's leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An employing office must give notice of a requirement for medical certification each time a certification is required; such notice must be written notice whenever required by § 825.301. An employing office's oral request to an employee to furnish any subsequent medical certification is sufficient.

(b) When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(c) In most cases, the employing office should request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave commences. The employing office may request certification at some later date if the employing office later has reason to question the appropriateness of the leave or its duration.

(d) At the time the employing office requests certification, the employing office must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. The employing office shall advise an employee whenever the employing office finds a certification incomplete, and provide the employee a reasonable opportunity to cure any such deficiency.

(e) If the employing office's sick or medical leave plan imposes medical certification requirements that are less stringent than the certification requirements of these regulations, and the employee or employing office elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (see § 825.207), only the employing office's less stringent sick leave certification requirements may be imposed.

§ 825.306 How much information may be required in medical certifications of a serious health condition?

(a) The Office of Compliance has made available an optional form (''Certification of Physician or Practitioner'') for employees' (or their family members) use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements. (See Appendix B to these regulations.) This optional form reflects certification requirements so as to permit the health care provider to furnish appropriate medical information within his or her knowledge.

(b) The Certification of Physician or Practitioner form is modeled closely on Form WH–380, as revised, which was developed by the Department of Labor (see 29 C.F.R. Part 825, Appendix B). The employing office may use the Office of Compliance's form, or Form WH–380, as revised, or another form containing the same basic information; however, no additional information may be required. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists. The form identifies the health care provider and type of medical practice (including pertinent specialization, if any), makes maximum use of checklist entries for ease in completing the form, and contains required entries for:

(1) A certification as to which part of the definition of serious health condition'' (see § 825.114), if any, applies to the patient's condition, and the medical facts which support the certification, including a brief statement as to how the medical facts meet the criteria of the definition.

(2)(i) The approximate date the serious health condition commenced, and its probable duration, including the probable duration of the patient's present incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) if different.

(ii) Whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis (i.e., part-time) as a result of the serious health condition (see § 825.117 and § 825.203), and if so, the probable duration of such schedule.

(iii) If the condition is pregnancy or a chronic condition within the meaning of § 825.114(a)(2)(iii), whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(3)(i)(A) If additional treatments will be required for the condition, an estimate of the probable number of such treatments.

(B) If the patient's incapacity will be intermittent, or will require a reduced leave schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any.

(ii) If any of the treatments referred to in subparagraph (i) will be provided by another provider of health services (e.g., physical therapist), the nature of the treatments.

(iii) If a regimen of continuing treatment by the patient is required under the supervision of the health care provider, a general description of the regimen (see § 825.114(b)).

(4) If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), whether the employee:

(i) is unable to perform work of any kind;

(ii) is unable to perform any one or more of the essential functions of the employee's position, including a statement of the essential functions the employee is unable to perform (see § 825.115), based on either information provided on a statement from the employing office of the essential functions of the position or, if not provided, discussion with the employee about the employee's job functions; or

(iii) must be absent from work for treatment.

(5)(i) If leave is required to care for a family member of the employee with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery. The employee is required to indicate on the form the care he or she will provide and an estimate of the time period.

(ii) If the employee's family member will need care only intermittently or on a reduced leave schedule basis (i.e., part-time), the probable duration of the need.

(c) If the employing office's sick or medical leave plan requires less information to be furnished in medical certifications than the certification requirements of these regulations, and the employee or employing office elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (see § 825.207), only the employing office's lesser sick leave certification requirements may be imposed.

§ 825.307 What may an employing office do if it questions the adequacy of a medical certification?

(a) If an employee submits a complete certification signed by the health care provider, the employing office may not request additional information from the employee's health care provider. However, a health care provider representing the employing office may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification.

(1) If an employee is on FMLA leave running concurrently with a workers'' compensation absence, and the provisions of the workers'' compensation statute permit the employing office or the employing office's representative to have direct contact with the employee's workers'' compensation health care provider, the employing office may follow the workers'' compensation provisions.

(2) An employing office that has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employing office's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the FMLA as made applicable by the CAA, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employing office's established leave policies. The employing office is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employing office. See also paragraphs (e) and (f) of this section.

(b) The employing office may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employing office is located in an area where access to health care is extremely limited (e.g., a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) If the opinions of the employee's and the employing office's designated health care providers differ, the employing office may require the employee to obtain certification from a third health care provider, again at the employing office's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employing office and the employee. The employing office and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employing office does not attempt in good faith to reach agreement, the employing office will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employing office that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and

whom the employee has not previously consulted may be failing to act in good faith.

(d) The employing office is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within two business days unless extenuating circumstances prevent such action.

(e) If the employing office requires the employee to obtain either a second or third opinion the employing office must reimburse an employee or family member for any reasonable out of pocket'' travel expenses incurred to obtain the second and third medical opinions. The employing office may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) In circumstances when the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employing office shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country.

§ 825.308 Under what circumstances may an employing office request subsequent recertifications of medical conditions?

(a) For pregnancy, chronic, or permanent/long-term conditions under continuing supervision of a health care provider (as defined in § 825.114(a) (2)(ii), (iii) or (iv)), an employing office may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless:

(1) Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of absences, the severity of the condition, complications); or

(2) The employing office receives information that casts doubt upon the employee's stated reason for the absence.

(b)(1) If the minimum duration of the period of incapacity specified on a certification furnished by the health care provider is more than 30 days, the employing office may not request recertification until that minimum duration has passed unless one of the conditions set forth in paragraph (c)(1), (2) or (3) of this section is met.

(2) For FMLA leave taken intermittently or on a reduced leave schedule basis, the employing office may not request recertification in less than the minimum period specified on the certification as necessary for such leave (including treatment) unless one of the conditions set forth in paragraph (c)(1), (2) or (3) of this section is met.

(c) For circumstances not covered by paragraphs (a) or (b) of this section, an employing office may request recertification at any reasonable interval, but not more often than every 30 days, unless:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or

(3) The employing office receives information that casts doubt upon the continuing validity of the certification.

(d) The employee must provide the requested recertification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) Any recertification requested by the employing office shall be at the employee's expense unless the employing office provides otherwise. No second or third opinion on recertification may be required.

§ 825.309 What notice may an employing office require regarding an employee's intent to return to work?

(a) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employing office's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employing office's obligations under FMLA, as made applicable by the CAA, to maintain health benefits (subject to applicable requirements of law) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employing office may require that the employee provide the employing office reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable. The employing office may also obtain information on such changed circumstances through requested status reports.

§ 825.310 Under what circumstances may an employing office require that an employee submit a medical certification that the employee is able (or unable) to return to work (i.e., a "fitness-for-duty" report)?

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employing office may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work.

(b) If the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Similarly, requirements under the Americans with Disabilities Act (ADA), as made applicable by the CAA, that any return-to-work physical be job-related and consistent with business necessity apply. For example, an attorney could not be required to submit to a medical examination or inquiry just because her leg had been amputated. The essential functions of an attorney's job do not require use of both legs; therefore such an inquiry would not be job related. An employing office may require a warehouse laborer, whose back impairment affects the ability to lift, to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to either the essential functions of his/her job or to his/her impairment.

(c) An employing office may seek fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification itself need only be a simple statement of an employee's ability to return to work. A health care provider employed by the employing office may contact the employee's health care provider with the employee's permission, for purposes of clarification of the employee's fitness to return to work. No additional information may be acquired, and clarification may be requested only for the serious health condition for which FMLA leave was taken. The employing office may not delay the employee's return to work while contact with the health care provider is being made.

(d) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(e) The notice that employing offices are required to give to each employee giving notice of the need for FMLA leave regarding their FMLA rights and obligations as made applicable by the CAA (see § 825.301) shall advise the employee if the employing office will require fitness-for-duty certification to return to work. If the employing office has a handbook explaining employment policies and benefits, the handbook should explain the employing office's general policy regarding any requirement for fitness-for-duty certification to return to work. Specific notice shall also be given to any employee from whom fitness-for-duty certification will be required either at the time notice of the need for leave is given or immediately after leave commences and the employing office is advised of the medical circumstances requiring the leave, unless the employee's condition changes from one that did not previously require certification pursuant to the employing office's practice or policy. No second or third fitness-for-duty certification may be required.

(f) An employing office may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employing office has failed to provide the notices required in paragraph (e) of this section.

(g) An employing office is not entitled to certification of fitness to return to duty when the employee takes intermittent leave as described in § 825.203.

(h) When an employee is unable to return to work after FMLA leave because of the continuation, recurrence, or onset of the employee's or family member's serious health condition, thereby preventing the employing office from recovering its share of health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition. (See § 825.213(a)(3).) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

§ 825.311 What happens if an employee fails to satisfy the medical certification and/or recertification requirements?

(a) In the case of foreseeable leave, an employing office may delay the taking of FMLA leave to an employee who fails to provide timely certification after being requested by the employing office to furnish such certification (i.e., within 15 calendar days, if practicable), until the required certification is provided.

(b) When the need for leave is not foreseeable, or in the case of recertification, an employee must provide certification (or recertification) within the time frame requested by the employing office (which must

allow at least 15 days after the employing office's request) or as soon as reasonably possible under the particular facts and circumstances. In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employing office may delay the employee's continuation of FMLA leave. If the employee never produces the certification, the leave is not FMLA leave.

(c) When requested by the employing office pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work (see § 825.310(a)) if the employing office has provided the required notice (see § 825.301(c); the employing office may delay restoration until the certification is provided. In this situation, unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated. See also § 825.213(a)(3).

§ 825.312 Under what circumstances may an employing office refuse to provide FMLA leave or reinstatement to eligible employees?

(a) If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employing office may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the employing office of the need for FMLA leave. (See § 825.302.)

(b) If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employing office may delay continuation of FMLA leave until an employee submits the certificate. (See §§ 825.305 and 825.311.) If the employee never produces the certification, the leave is not FMLA leave.

(c) If an employee fails to provide a requested fitness-for-duty certification to return to work, an employing office may delay restoration until the employee submits the certificate. (See §§ 825.310 and 825.311.)

(d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Thus, an employee's rights to continued leave, maintenance of health benefits, and restoration cease under FMLA, as made applicable by the CAA, if and when the employment relationship terminates (e.g., layoff), unless that relationship continues, for example, by the employee remaining on paid FMLA leave. If the employee is recalled or otherwise re-employed, an eligible employee is immediately entitled to further FMLA leave for an FMLA-qualifying reason. An employing office must be able to show, when an employee requests restoration, that the employee would not otherwise have been employed if leave had not been taken in order to deny restoration to employment. (See § 825.216.)

(e) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intention to return to work. (See § 825.309.) If an employee unequivocally advises the employing office either before or during the taking of leave that the employee does not intend to return to work, and the employment relationship is terminated, the employee's entitlement to continued leave, maintenance of health benefits, and restoration ceases unless the employment relationship continues, for example, by the employee remaining on paid leave. An employee may not be required to take more leave than necessary to address the circumstances for which leave was taken. If the employee is able to return to work earlier than anticipated, the employee shall provide the employing office two business days notice where feasible; the employing office is required to restore the employee once such notice is given, or where such prior notice was not feasible.

(f) An employing office may deny restoration to employment, but not the taking of FMLA leave and the maintenance of health benefits, to an eligible employee only under the terms of the key employee'' exemption. Denial of reinstatement must be necessary to prevent substantial and grievous economic injury'' to the employing office's operations. The employing office must notify the employee of the employee's status as a key employee'' and of the employing office's intent to deny reinstatement on that basis when the employing office makes these determinations. If leave has started, the employee must be given a reasonable opportunity to return to work after being so notified. (See § 825.219.)

(g) An employee who fraudulently obtains FMLA leave from an employing office is not protected by job restoration or maintenance of health benefits provisions of the FMLA as made applicable by the CAA.

(h) If the employing office has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employing office which does not have such a policy may not deny benefits to which an employee is entitled under FMLA as made applicable by the CAA on this basis unless the FMLA leave was fraudulently obtained as in paragraph (g) of this section.

SUBPART D—WHAT ENFORCEMENT MECHANISMS DOES THE CAA PROVIDE?

§ 825.400 What can employees do who believe that their rights under the FMLA as made applicable by the CAA have been violated?

(a) To commence a proceeding, a covered employee alleging a violation of the rights and protections of the FMLA made applicable by the CAA must request counseling by the Office of Compliance not later than 180 days after the date of the alleged violation. If a covered employee misses this deadline, the covered employee will be unable to obtain a remedy under the CAA.

(b) The following procedures are available under title IV of the CAA for covered employees who believe that their rights under FMLA as made applicable by the CAA have been violated:

(1) counseling;

(2) mediation; and

(3) election of either—

(A) a formal complaint, filed with the Office of Compliance, and a hearing before a hearing officer, subject to review by the Board of Directors of the Office of Compliance, and judicial review in the United States Court of Appeals for the Federal Circuit; or

(B) a civil action in a district court of the United States.

(c) Regulations of the Office of Compliance describing and governing these procedures are found at [proposed rules can be found at 141 Cong. Rec. S17012 (November 14, 1995)].

§ 825.401 [Reserved.]
§ 825.402 [Reserved.]
§ 825.403 [Reserved.]
§ 825.404 [Reserved.]

SUBPART E—[RESERVED.]

SUBPART F—WHAT SPECIAL RULES APPLY TO EMPLOYEES OF SCHOOLS?

§ 825.600 To whom do the special rules apply?

(a) Certain special rules apply to employees of ''local educational agencies,'' including public school boards and elementary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

(b) Educational institutions are covered by FMLA as made applicable by the CAA (and these special rules). The usual requirements for employees to be ''eligible'' do apply, however.

(c) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. ''Instructional employees'' are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(d) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

§ 825.601 What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?

(a) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

(1) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employing office may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave

per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. ''Periods of a particular duration'' means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (see § 825.302) to be taken intermittently or on a reduced leave schedule, the employing office may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employing office may require the employee to delay the taking of leave until the notice provision is met. See § 825.207(h).

§ 825.602 What limitations apply to the taking of leave near the end of an academic term?

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(1) An instructional employee begins leave more than five weeks before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) The leave will last at least three weeks, and

(ii) The employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) The leave will last more than two weeks, and

(ii) The employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a term, and the leave will last more than five working days. The employing office may require the employee to continue taking leave until the end of the term.

(b) For purposes of these provisions, ''academic term'' means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA as made applicable by the CAA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employing office could require the employee to stay out on leave until the end of the term.

§ 825.603 Is all leave taken during "periods of a particular duration" counted against the FMLA leave entitlement?

(a) If an employee chooses to take leave for ''periods of a particular duration'' in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employing office has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employing office to the end of the school term is not counted as FMLA leave; however, the employing office shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

§ 825.604 What special rules apply to restoration to "an equivalent position?"

The determination of how an employee is to be restored to ''an equivalent position'' upon return from FMLA leave will be made on the basis of ''established school board policies and practices, private school policies and practices, and collective bargaining agreements.'' The ''established policies'' and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to ''an equivalent position'' must provide substantially the same protections as provided in the FMLA, as made applicable by the CAA, for reinstated employees. See § 825.215. In other words, the policy or collective bargaining agreement must provide for restoration to an ''equivalent position'' with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

SUBPART G—HOW DO OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS AFFECT EMPLOYEE RIGHTS UNDER THE FMLA AS MADE APPLICABLE BY THE CAA?

§ 825.700 What if an employing office provides more generous benefits than required by FMLA as Made Applicable by the CAA?

(a) An employing office must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA, as made applicable by the CAA, may not be diminished by any employment benefit program or plan. For example, a provision of a CBA which provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by FMLA. If an employing office provides greater unpaid family leave rights than are afforded by FMLA, the employing office is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than as may be otherwise required by law), to the additional leave period not covered by FMLA. If an employee takes paid or unpaid leave and the employing office does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement.

(b) Nothing in this FMLA, as made applicable by the CAA, prevents an employing office from amending existing leave and employee benefit programs, provided they comply with FMLA as made applicable by the CAA. However, nothing in the FMLA, as made applicable by the CAA, is intended to discourage employing offices from adopting or retaining more generous leave policies.

(c) [Reserved.]

§ 825.701 [Reserved.]

§ 825.702 How does FMLA affect anti-discrimination laws as applied by section 201 of the CAA?

(a) Nothing in FMLA modifies or affects any applicable law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (e.g., Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act), as made applicable by the CAA. FMLA's legislative history explains that FMLA is ''not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990, or the regulations issued under that act. Thus, the leave provisions of the [FMLA] are wholly distinct from the reasonable accommodation obligations of employing offices covered under the [ADA] * * * or the Federal government itself. The purpose of the FMLA is to make leave available to eligible employees and employing offices within its coverage, and not to limit already existing rights and protection.'' S. Rep. No. 3, 103d Cong., 1st Sess. 38 (1993). An employing office must therefore provide leave under whichever statutory provision provides the greater rights to employees.

(b) If an employee is a qualified individual with a disability within the meaning of the Americans with Disabilities Act (ADA), the employing office must make reasonable accommodations, etc., barring undue hardship, in accordance with the ADA. At the same time, the employing office must afford an employee his or her FMLA rights. ADA's ''disability'' and FMLA's ''serious health condition'' are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employing offices to maintain employees'' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

(c)(1) A reasonable accommodation under the ADA might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employing office did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of 12 workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employing office to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an ''eligible employee'' entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which

the employing office grants because it is not an undue hardship. The employing office advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employing office maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employing office policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the employee would be shielded from FMLA's provision for temporary assignment to a different alternative position. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office's FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. See § 825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a ''light duty'' position. If the employing office offers such a position, the employee is permitted but not required to accept the position (see § 825.220(d)). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. See § 825.207(d)(2). If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA.

(e) If an employing office requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by the employing office (and, therefore, not an ''eligible'' employee under FMLA) may not be denied maternity leave if the employing office normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) For further information on Federal anti-discrimination laws applied by section 201 of the CAA, including Title VII and the ADA, individuals are encouraged to contact the Office of Compliance.

SUBPART H—DEFINITIONS

§ 825.800 Definitions.

For purposes of this part:

ADA means the Americans With Disabilities Act (42 U.S.C. 12101 et seq.).

CAA means the Congressional Accountability Act of 1995, Pub. Law 104–1, 101 Stat. 3, 2 U.S.C. § 1301.

Continuing treatment means: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(1) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(2) Any period of incapacity due to pregnancy, or for prenatal care.

(3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Covered employee means any employee of—(1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Compliance; or (9) the Office of Technology Assessment.

Employee of the Office of the Architect of the Capitol.—The term ''employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants.

Employee of the Capitol Police.—The term ''employee of the Capitol Police'' includes any member or officer of the Capitol Police.

Employee of the House of Representatives—The term ''employee of the House of Representatives'' includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) under ''covered employee'' above.

Employee of the Senate.—The term ''employee of the Senate'' includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) under ''covered employee'' above.

Eligible employee means a covered employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

Employee means an employee as defined under the CAA and includes an applicant for employment and a former employee.

Employee employed in an instructional capacity. See Teacher.

Employing Office means: (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

Employment benefits means all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office or through an employee benefit plan. The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. (See § 825.209(a)).

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

FMLA means the Family and Medical Leave Act of 1993, Public Law 103-3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 et seq.).

Group health plan means the Federal Employees Health Benefits Program and any other plan of, or contributed to by, an employing office (including a self-insured plan) to provide health care (directly or otherwise) to the employing office's employees, former employees, or the families of such employees or former employees. For purposes of FMLA as made applicable by the CAA the term ''group health plan'' shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that: (1) no contributions are made by the employing office; (2) participation in the program is completely voluntary for employees; (3) the sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer; (4) the employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and, (5) the premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means: (1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or (2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and (3) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and (4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. (5) Any health care provider from whom an employing office or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits. (6) A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country.

''Incapable of self-care'' means that the individual requires active assistance or supervision to provide daily self-care in several of the ''activities of daily living'' (ADLs) or ''instrumental activities of daily living'' (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Instructional employee: See Teacher.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Mental disability: See Physical or mental disability.

Office of Compliance means the independent office established in the legislative branch under section 301 of the Congressional Accountability Act of 1995.

Parent means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child.

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 C.F.R. Part 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms.

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Secretary means the Secretary of Labor or authorized representative.

Serious health condition entitling an employee to FMLA leave means: (1) an illness, injury, impairment, or physical or mental condition that involves: (i) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or (ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes:

(A) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves: (1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(B) Any period of incapacity due to pregnancy, or for prenatal care.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which: (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and (3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(E) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(2) Treatment for purposes of paragraph (1) of this definition includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (1)(ii)(A)(2) of this definition, a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bedrest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(3) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not ''serious health conditions'' unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(4) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(5) Absences attributable to incapacity under paragraphs (1)(ii) (B) or (C) of this definition qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the

employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or employee employed in an instructional capacity, or instructional employee) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

APPENDIX A TO PART 825—[RESERVED.]

APPENDIX B TO PART 825—CERTIFICATION OF PHYSICIAN OR PRACTITIONER

CERTIFICATION OF HEALTH CARE PROVIDER (FAMILY AND MEDICAL LEAVE ACT OF 1993 AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

1. Employee's Name:

2. Patient's Name (if different from employee):

3. The attached sheet describes what is meant by a ''serious health condition'' under the Family and Medical Leave Act as made applicable by the Congressional Accountability Act. Does the patient's condition[1] qualify under any of the categories described? If so, please check the applicable category.

(1)____ (2) ____ (3) ____ (4) ____ (5) ____ (6) ____, or None of the above ____

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5.a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity[2] if different):

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)?_____

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated[2] and the likely duration and frequency of episodes of incapacity:[2]

6.a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

7.a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?_____

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform:

c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment? _____

8.a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation? _____

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery? _____

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:_____

(Signature of Health Care Provider)_____

(Type of Practice)_____

(Address)_____

(Telephone number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:_____

(Employee signature)_____

(Date)

A ''Serious Health Condition'' means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. *Hospital care.*—Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity[2] or subsequent treatment in connection with or consequent to such inpatient care.

2. *Absence plus treatment.*—(a) A period of incapacity[2] of more than three consecutive calendar days (including any subsequent treatment or period of incapacity[2] relating to the same condition), that also involves: (1) Treatment[3] two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment[4] under the supervision of the health care provider.

3. *Pregnancy.*—Any period of incapacity due to pregnancy, or for prenatal care.

4. *Chronic conditions requiring treatments.*—A chronic condition which: (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and (3) May cause episodic rather than a continuing period of incapacity[2] (e.g., asthma, diabetes, epilepsy, etc.)

5. *Permanent/long-term conditions requiring supervision.*—A period of incapacity[2] which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. *Multiple treatments (non-chronic conditions).*—Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity[2] of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

APPENDIX C TO PART 825—[RESERVED]

APPENDIX D TO PART 825—PROTOTYPE NOTICE: EMPLOYING OFFICE RESPONSE TO EMPLOYEE REQUEST FOR FAMILY AND MEDICAL LEAVE

EMPLOYING OFFICE RESPONSE TO EMPLOYEE REQUEST FOR FAMILY OR MEDICAL LEAVE

(Optional use form—see § 825.301(c) of the regulations of the Office of Compliance)

(Family and Medical Leave Act of 1993, as made applicable by the Congressional Accountability Act of 1995)

(Date)

To: _____

(Employee's name)

From: _____

(Name of appropriate employing office representative)

Subject: Request for family/medical leave

On _____ (date), you notified us of your need to take family/medical leave due to:

☐ the birth of your child, or the placement of a child with you for adoption or foster care; or

☐ a serious health condition that makes you unable to perform the essential functions of your job; or

☐ a serious health condition affecting your ☐ spouse, ☐ child, ☐ parent, for which you are needed to provide care.

You notified us that you need this leave beginning on _____ (date) and that you

[1] Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

[2] ''Incapacity,'' for purposes of FMLA as made applicable by the CAA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

[3] Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

[4] A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

expect leave to continue until on or about _____ (date).

Except as explained below, you have a right under the FMLA, as made applicable by the CAA, for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that: (check appropriate boxes; explain where indicated)

1. You are □ eligible □ not eligible for leave under the FMLA as made applicable by the CAA.

2. The requested leave □ will □ will not be counted against your annual FMLA leave entitlement.

3. You □ will □ will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by _____ (insert date) (must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is submitted.

4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We □ will □ will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used the following conditions will apply: (Explain)

5(a). If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: (Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.)

(b). You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, *provided* we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work. We □ will □ will not pay your share of health insurance premiums while you are on leave.

(c). We □ will □ will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA leave. If we do pay your premiums for other benefits, when you return from leave you □ will □ will not be expected to reimburse us for the payments made on your behalf.

6. You □ will □ will not be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until the certification is provided.

7(a). You □ are □ are not a ''key employee'' as described in §825.218 of the Office of Compliance's FMLA regulations. If you are a ''key employee,'' restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us.

(b). We □ have □ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. (Explain (a) and/or (b) below. See §825.219 of the Office of Compliance's FMLA regulations.)

8. While on leave, you □ will □ will not be required to furnish us with periodic reports every _____ (indicate interval of periodic reports, as appropriate for the particular leave situation) of your status and intent to return to work (see §825.309 of the Office of Compliance's FMLA regulations). If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you □ will □ will not be required to notify us at least two work days prior to the date you intend to report for work.

9. You □ will □ will not be required to furnish recertification relating to a serious health condition. (Explain below, if necessary, including the interval between certifications as prescribed in §825.308 of the Office of Compliance's FMLA regulations.)

APPENDIX E TO PART 825—[RESERVED.]

OFFICE OF COMPLIANCE

THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT OF 1988

Notice of proposed rulemaking

Summary: The Board of Directors of the Office of Compliance is publishing proposed regulations to implement section 205 of the Congressional Accountability Act of 1995 (''CAA''), P.L. 104–1, 2 U.S.C. §1315, to employees of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The CAA applies the rights and protections of eleven labor and employment statutes to covered employees within the legislative branch. Section 205 provides that no employing office (meeting the size thresholds for coverage as an employer) shall be closed or a mass layoff ordered within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act, 29 U.S.C §2102 (''WARN''), until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to representatives of covered employees or, if there are no representatives, to covered employees. 2 U.S.C. §1315(a). The provisions of section 205 are effective January 23, 1996, one year after the enactment date of the CAA, for all employing offices except the General Accounting Office and the Library of Congress. Accordingly, this notice does not include rules applicable to the General Accounting Office of the Library of Congress.

This notice proposes that substantially similar regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities; and their employees. Accordingly:

(1) Senate.—It is proposed that regulations as described in this notice be included in the body of regulations that shall apply to the Senate and employees of the Senate, and this proposal regarding the Senate and its employees is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) House of Representatives.—It is further proposed that regulations as described in this notice be included in the body of regulations that shall apply to the House of Representatives and employees of the House of Representatives, and this proposal regarding the House of Representatives and its employees is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) Certain Congressional instrumentalities.—It is further proposed that regulations as described in this notice be included in the body of regulations that shall apply to the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment, and their employees; and this proposal regarding these seven Congressional instrumentalities is recommended by the Office of Compliance's Executive Director.

Dates: Comments are due within 30 days after the date of publication of this notice in the Congressional Record.

Addresses: Submit written comments to the Chair of the Board of Directors, Office of Compliance, Room LA 200, Library of Congress, 110 Second Street, S.E., Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 252–3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Building, 101 Independence Avenue, S.E., Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Executive Director, Office of Compliance, at (202) 252–3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, at (202) 224–2705.

Supplementary information:

Background and summary: The Congressional Accountability Act of 1995 (''CAA''), P.L. 104–1, was enacted into law on January 23, 1995. 2 U.S.C. §§1301 et seq. In general, the CAA applies the rights and protections of eleven federal labor and employment statutes to covered employees and employing offices within the legislative branch. Section 205 of the CAA provides that no employing office shall be closed or a mass layoff ordered within the meaning of section 3 of the Worker Adjustment Retraining and Notification Act of 1988, 29 U.S.C. §2102 (''WARN'') until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to representatives of covered employees or, if there are no representatives, to covered employees. 2 U.S.C. §1315(a). Section 225(f) of the CAA provides that ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of [WARN] shall apply under this Act.'' 2 U.S.C. §1361(f). Sections 304(a) and 205(c) of the CAA directs the Board of Directors of the Office of Compliance established under the CAA to issue regulations implementing the section. 2 U.S.C. §§1384(a), 1315(c). Section 205(c) further states that such regulations ''shall be the same as substantive regulations issued by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1315(c).

The Board has published in the Congressional Record for comment an Advance Notice of Proposed Rulemaking. See 141 Cong. Rec. S14542 (daily ed., Sept. 28, 1995). After consideration of the public comments relating to rulemaking under section 205 of the

CAA, the Board is publishing this proposed regulation.

With the exception of technical and nomenclature changes, the Board does not propose substantial departure from otherwise applicable Secretary's regulations. See Secretary of Labor's regulations at 20 C.F.R. Part 639; Final rule published at 54 Federal Register 16042 (April 20, 1989).

In developing these proposed regulations, a number of issues have been identified and explored. The Board proposes to resolve these issues as described below, and it particularly invites comments on the following issues:

1. Employer coverage.—WARN contains size thresholds for coverage as an employer and specifies which workers are counted in making coverage determinations. Section 225(f)(2) of the CAA makes clear that the provisions of WARN determining coverage based on size shall apply in determining coverage of employing offices under the CAA. 2 U.S.C. §1361(f)(2). Thus, the Secretary's regulations implementing WARN's coverage requirements (20 C.F.R. §639.3(a)) are included in these regulations.

2. Notification of State dislocated worker assistance programs and coordination with job placement and retraining programs.—In contrast to section 3 of WARN, section 205 of the CAA does not require an employing office to give notice of the office closing or layoff to the ''State dislocated worker unit'' or to the ''chief elected official of the unit of local government'' within which such closing or layoff is to occur. See 29 U.S.C. §2102(a)(2). Therefore, the proposed regulations do not require notice to be given to State and local entities and do not include the Secretary's regulations regarding such notice.

3. Exemption for strikes and lockouts.—The proposed regulations do not include the Secretary's regulations regarding WARN's exemption for strikes and lockouts (20 C.F.R. §639.5). Strikes are prohibited in federal employment. 18 U.S.C. §1918. Similarly, the Federal Labor Relations Act, which applies to covered employees and employing offices under section 220 of the CAA, prohibits picketing that interferes with agency operations, as well as slowdowns, stoppages and strikes under any circumstances. 5 U.S.C. §7116(b)(7). Therefore, these regulations are inapplicable to legislative branch employees.

4. ''Faltering company'' exemption.—Section 3(b) of WARN sets forth three conditions under which the notification period may be reduced to less than 60 days. Under the ''faltering company'' exemption, an employer must be in the process of seeking capital or business during the time that the 60-day notice would have been required. This section is inapplicable to employment within the legislative branch and the Secretary's regulation implementing this section (20 C.F.R. §639.9(a)) is not included in the proposed regulations. The ''unforeseen business circumstances'' and ''natural disaster'' exceptions in sections 3(b)(2)(A) and (B) of WARN, appear to be applicable and thus the Secretary's regulations (29 C.F.R. §639.9(b) and (c)) have been included in the proposed regulations, with appropriate modifications.

5. Extension of short-term layoff.—The Secretary's regulations address the Notice requirement where an employer extends short-term layoffs (6 months or less) beyond 6 months due to business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time the initial layoff is required. 20 C.F.R. §639.4(b). There may be circumstances where an employing office may be required to extend short-term layoffs due to unforeseen events (such as unforeseen budget or funding reductions or eliminations). Therefore, the Board includes this provision (with appropriate modification as part of its proposed regulations.

6. Sale of business.—The Board includes the Secretary's regulations regarding Notice in the case of a sale of all or parts of a business (20 C.F.R. §639.4(c)).

Recommended Method of Approval: The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that apply to the House of Representatives and employees of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 20th day of November, 1995.

GLEN D. NAGER,
Chair of the Board, Office of Compliance.

APPLICATION OF RIGHTS AND PROTECTIONS OF THE WORKER ADJUSTMENT RETRAINING AND NOTIFICATION ACT OF 1988

Section
639.1 Purpose and scope.
639.2 What does WARN require?
639.3 Definitions.
639.4 Who must give notice?
639.5 When must notice be given?
639.6 Who must receive notice?
639.7 What must the notice contain?
639.8 How is the notice served?
639.9 When may notice be given less than 60 days in advance?
639.10 When may notice be extended?

§639.1 Purpose and scope.

(a) Purpose of WARN as applied by the CAA.—Section 205 of the Congressional Accountability Act, P.L. 104–1 (''CAA''), provides protection to covered employees and their families by requiring employing offices to provide notification 60 calendar days in advance of office closings and mass layoffs within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. §2102. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. As used in these regulations, WARN shall refer to the provisions of WARN applied to covered employing offices by section 205 of the CAA.

(b) Scope of these regulations.—These regulations establish basic definitions and rules for giving notice, implementing the provisions of WARN. The objective of these regulations is to establish clear principles and broad guidelines which can be applied in specific circumstances. However, it is recognized that rulemaking cannot address the multitude of employing office-specific situations in which advance notice will be given.

(c) Notice encouraged where not required.—An employing office that is not required to comply with the notice requirements of section 205 of the CAA is encouraged, to the extent possible, to provide notice to its employees about a proposal to close an office or permanently reduce its workforce.

(d) Notice in ambiguous situations.—It is civically desirable and it would appear to be good business practice for an employing office to provide advance notice to its workers or unions when terminating a significant number of employees. In practical terms, there are some questions and ambiguities of interpretation inherent in the application of WARN that cannot be addressed in these regulations. It is therefore prudent for employing offices to weigh the desirability of advance notice against the possibility of expensive and time-consuming litigation to resolve disputes where notice has not been given. The Office encourages employing offices to give notice in all circumstances.

(e) WARN not to supersede other laws and contracts.—The provisions of WARN do not supersede any otherwise applicable laws or collective bargaining agreements that provide for additional notice or additional rights and remedies. If such law or agreement provides for a longer notice period, WARN notice shall run concurrently with that additional notice period. Collective bargaining agreements may be used to clarify or amplify the terms and conditions of WARN, but may not reduce WARN rights.

§639.2 What does WARN require?

WARN requires employing offices that are planning an office closing or a mass layoff to give affected employees at least 60 days' notice of such an employment action. While the 60-day period is the minimum for advance notice, this provision is not intended to discourage employing offices from voluntarily providing longer periods of advance notice. Not all office closings and layoffs are subject to WARN, and certain employment thresholds must be reached before WARN applies. WARN sets out specific exemptions, and provides for a reduction in the notification period in particular circumstances. Remedies authorized under section 205 of the CAA may be assessed against employing offices that violate WARN requirements.

§639.3 Definitions.

(a) Employing office.—(1) The term ''employing office'' means any business enterprise that employs—

(i) 100 or more employees, excluding part-time employees; or

(ii) employs 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime.

Workers on temporary layoff or on leave who have a reasonable expectation of recall are counted as employees. An employee has a ''reasonable expectation of recall'' when he/she understands, through notification or through common practice, that his/her employment with the employer has been temporarily interrupted and that he/she will be recalled to the same or to a similar job.

(2) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN, are nonetheless counted as employees for purposes of determining coverage as an employer.

(3) An employing office may have one or more sites of employment under common ownership or control.

(b) Office closing.—The term ''office closing'' means the permanent or temporary shutdown of a ''single site of employment'', or one or more ''facilities or operating units'' within a single site of employment, if the shutdown results in an ''employment loss'' during any 30-day period at the single site of employment for 50 or more employees, excluding any part-time employees. An employment action that results in the effective cessation of the work performed by a unit, even if a few employees remain, is a shutdown. A ''temporary shutdown'' triggers the notice requirement only if there are a sufficient number of terminations, layoffs exceeding 6 months, or reductions in hours of work as specified under the definition of ''employment loss.''

(c) Mass layoff.—(1) The term ''mass layoff'' means a reduction in force which first, is not the result of an office closing, and second, results in an employment loss at the

single site of employment during any 30-day period for:

(i) At least 33 percent of the active employees, excluding part-time employees, and

(ii) At least 50 employees, excluding part-time employees.

Where 500 or more employees (excluding part-time employees) are affected, the 33% requirement does not apply, and notice is required if the other criteria are met. Office closings involve employment loss which results from the shutdown of one or more distinct units within a single site or the entire site. A mass layoff involves employment loss, regardless of whether one or more units are shut down at the site.

(2) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN are nonetheless counted as employees for purposes of determining coverage as an office closing or mass layoff. For example, if an employer closes a temporary project on which 10 permanent and 40 temporary workers are employed, a covered office closing has occurred although only 10 workers are entitled to notice.

(d) Representative.—The term ''representative'' means an exclusive representative of employees within the meaning of 5 U.S.C. §§7101 et seq., as applied to covered employees and employing offices by section 220 of the CAA, 2 U.S.C. §1351.

(e) Affected employees.—The term ''affected employees'' means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer. This includes individually identifiable employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such individual workers reasonably can be identified at the time notice is required to be given. The term ''affected employees'' includes managerial and supervisory employees. Consultant or contract employees who have a separate employment relationship with another employing office or employer and are paid by that other employing office or employer, or who are self-employed, are not ''affected employees'' of the business to which they are assigned. In addition, for purposes of determining whether coverage thresholds are met, either incumbent workers in jobs being eliminated or, if known 60 days in advance, the actual employees who suffer an employment loss may be counted.

(f) Employment loss.—(1) The term ''employment loss'' means (i) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (ii) a layoff exceeding 6 months, or (iii) a reduction in hours of work of individual employees of more than 50% during each month of any 6-month period.

(2) Where a termination or a layoff (see paragraphs (f)(1)(i) and (ii) of this section) is involved, an employment loss does not occur when an employee is reassigned or transferred to employing office-sponsored programs, such as retraining or job search activities, as long as the reassignment does not constitute a constructive discharge or other involuntary termination.

(3) An employee is not considered to have experienced an employment loss if the closing or layoff is the result of the relocation or consolidation of part or all of the employing office's operations and, prior to the closing or layoff—

(i) The employing office offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or

(ii) The employing office offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

(4) A ''relocation or consolidation'' of part or all of an employing office's operations, for purposes of paragraph §639.3(f)(3), means that some definable operations are transferred to a different site of employment and that transfer results in an office closing or mass layoff.

(g) Part-time employee.—The term ''part-time'' employee means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required, including workers who work full-time. This term may include workers who would traditionally be understood as ''seasonal'' employees. The period to be used for calculating whether a worker has worked ''an average of fewer than 20 hours per week'' is the shorter of the actual time the worker has been employed or the most recent 90 days.

(h) Single site of employment.—(1) A single site of employment can refer to either a single location or a group of contiguous locations. Separate facilities across the street from one another may be considered a single site of employment.

(2) There may be several single sites of employment within a single building, such as an office building, if separate employing offices conduct activities within such a building. For example, an office building housing 50 different employing offices will contain 50 single sites of employment. The offices of each employing office will be its single site of employment.

(3) Separate buildings or areas which are not directly connected or in immediate proximity may be considered a single site of employment if they are in reasonable geographic proximity, used for the same purpose, and share the same staff and equipment.

(4) Non-contiguous sites in the same geographic area which do not share the same staff or operational purpose should not be considered a single site.

(5) Contiguous buildings operated by the same employing office which have separate management and have separate workforces are considered separate single sites of employment.

(6) For workers whose primary duties require travel from point to point, who are outstationed, or whose primary duties involve work outside any of the employing office's regular employment sites (e.g., railroad workers, bus drivers, salespersons), the single site of employment to which they are assigned as their home base, from which their work is assigned, or to which they report will be the single site in which they are covered for WARN purposes.

(7) Foreign sites of employment are not covered under WARN. U.S. workers at such sites are counted to determine whether an employing office is covered as an employer under §639.3(a).

(8) The term ''single site of employment'' may also apply to truly unusual organizational situations where the above criteria do not reasonably apply. The application of this definition with the intent to evade the purpose of WARN to provide notice is not acceptable.

(i) Facility or operating unit.—The term ''facility'' refers to a building or buildings. The term ''operating unit'' refers to an organizationally or operationally distinct product, operation, or specific work function within or across facilities at the single site.

§639.4 Who must give notice?

Section 205(a)(1) of the CAA states that ''[n]o employing office shall be closed or a mass layoff ordered within the meaning of section 3 of [WARN] until the end of a 60-day period after the employer serves written notice of such prospective closing or layoff * * *.'' Therefore, an employing office that is anticipating carrying out an office closing or mass layoff is required to give notice to affected employees or their representative(s). (See definitions in §639.3 of this part.).

(a) It is the responsibility of the employing office to decide the most appropriate person within the employing office's organization to prepare and deliver the notice to affected employees or their representative(s). In most instances, this may be the local site office manager, the local personnel director or a labor relations officer.

(b) An employing office that has previously announced and carried out a short-term layoff (6 months or less) which is being extended beyond 6 months due to business circumstances not reasonably foreseeable at the time of the initial layoff is required to give notice when it becomes reasonably foreseeable that the extension is required. A layoff extending beyond 6 months from the date the layoff commenced for any other reason shall be treated as an employment loss from the date of its commencement.

(c) In the case of the sale of part or all of a business, section 2(b)(1) of WARN, as applied by the CAA, defines who the ''employer'' is. The seller is responsible for providing notice of any plant closing or mass layoff which takes place up to and including the effective date (time) of the sale, and the buyer is responsible for providing notice of any office closing or mass layoff that takes place thereafter. Affected employees are always entitled to notice; at all times the employer is responsible for providing notice.

(1) If the seller is made aware of any definite plans on the part of the buyer to carry out an office closing or mass layoff within 60 days of purchase, the seller may give notice to affected employees as an agent of the buyer, if so empowered. If the seller does not give notice, the buyer is, nevertheless, responsible to give notice. If the seller gives notice as the buyer's agent, the responsibility for notice still remains with the buyer.

(2) It may be prudent for the buyer and seller to determine the impacts of the sale on workers, and to arrange between them for advance notice to be given to affected employees or their representative(s), if a mass layoff or office closing is planned.

§639.5 When must notice be given?

(a) General rule.—(1) With certain exceptions discussed in paragraphs (b), (c) and (d) of this section and in §639.9 of this part, notice must be given at least 60 calendar days prior to any planned office closing or mass layoff, as defined in these regulations. When all employees are not terminated on the same date, the date of the first individual termination within the statutory 30-day or 90-day period triggers the 60-day notice requirement. A worker's last day of employment is considered the date of that worker's layoff. The first and each subsequent group of terminees are entitled to a full 60 days' notice. In order for an employer to decide whether issuing notice is required, the employer should—

(i) Look ahead 30 days and behind 30 days to determine whether employment actions both taken and planned will, in the aggregate for any 30-day period, reach the minimum numbers for an office closing or a mass layoff and thus trigger the notice requirement; and

(ii) Look ahead 90 days and behind 90 days to determine whether employment actions

both taken and planned each of which separately is not of sufficient size to trigger WARN coverage will, in the aggregate for any 90-day period, reach the minimum numbers for an office closings or a mass layoff and thus trigger the notice requirement. An employing office is not, however, required under section 3(d) to give notice if the employing office demonstrates that the separate employment losses are the result of separate and distinct actions and causes, and are not an attempt to evade the requirements of WARN.

(2) The point in time at which the number of employees is to be measured for the purpose of determining coverage is the date the first notice is required to be given. If this ''snapshot'' of the number of employees employed on that date is clearly unrepresentative of the ordinary or average employment level, then a more representative number can be used to determine coverage. Examples of unrepresentative employment levels include cases when the level is near the peak or trough of an employment cycle or when large upward or downward shifts in the number of employees occur around the time notice is to be given. A more representative number may be an average number of employees over a recent period of time or the number of employees on an alternative date which is more representative of normal employment levels. Alternative methods cannot be used to evade the purpose of WARN, and should only be used in unusual circumstances.

(b) Transfers.—(1) Notice is not required in certain cases involving transfers, as described under the definition of ''employment loss'' at §639.3(f) of this part.

(2) An offer of reassignment to a different site of employment should not be deemed to be a ''transfer'' if the new job constitutes a constructive discharge.

(3) The meaning of the term ''reasonable commuting distance'' will vary with local conditions. In determining what is a ''reasonable commuting distance,'' consideration should be given to the following factors: geographic accessibility of the place of work, the quality of the roads, customarily available transportation, and the usual travel time.

(4) In cases where the transfer is beyond reasonable commuting distance, the employing office may become liable for failure to give notice if an offer to transfer is not accepted within 30 days of the offer or of the closing or layoff (whichever is later). Depending upon when the offer of transfer was made by the employing office, the normal 60-day notice period may have expired and the office closing or mass layoff may have occurred. An employing office is, therefore, well advised to provide 60-day advance notice as part of the transfer offer.

(c) Temporary employment.—(1) No notice is required if the closing is of a temporary facility, or if the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking.

(2) Employees must clearly understand at the time of hire that their employment is temporary. When such understandings exist will be determined by reference to employment contracts, collective bargaining agreements, or employment practices of an industry or a locality, but the burden of proof will lie with the employing office to show that the temporary nature of the project or facility was clearly communicated should questions arise regarding the temporary employment understandings.

§639.6 Who must receive notice?

Section 3(a) of WARN provides for notice to each representative of the affected employees as of the time notice is required to be given or, if there is no such representative at that time, to each affected employee.

(a) Representative(s) of affected employees.—Written notice is to be served upon the chief elected officer of the exclusive representative(s) or bargaining agent(s) of affected employees at the time of the notice. If this person is not the same as the officer of the local union(s) representing affected employees, it is recommended that a copy also be given to the local union official(s).

(b) Affected employees.—Notice is required to be given to employees who may reasonably be expected to experience an employment loss. This includes employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified at the time notice is required to be given. If, at the time notice is required to be given, the employing office cannot identify the employee who may reasonably be expected to experience an employment loss due to the elimination of a particular position, the employing office must provide notice to the incumbent in that position. While part-time employees are not counted in determining whether office closing or mass layoff thresholds are reached, such workers are due notice.

§639.7 What must the notice contain?

(a) Notice must be specific.—(1) All notice must be specific.

(2) Where voluntary notice has been given more than 60 days in advance, but does not contain all of the required elements set out in this section, the employer must ensure that all of the information required by this section is provided in writing to the parties listed in §639.6 at least 60 days in advance of a covered employment action.

(3) Notice may be given conditional upon the occurrence or nonoccurrence of an event, such as the renewal of a major contract, only when the event is definite and the consequences of its occurrence or nonoccurrence will necessarily, in the normal course of business, lead to a covered office closing or mass layoff less than 60 days after the event. The notice must contain each of the elements set out in this section.

(4) The information provided in the notice shall be based on the best information available to the employing office at the time the notice is served. It is not the intent of the regulations that errors in the information provided in a notice that occur because events subsequently change or that are minor, inadvertent errors are to be the basis for finding a violation of WARN.

(b) As used in this section, the term ''date'' refers to a specific date or to a 14-day period during which a separation or separations are expected to occur. If separations are planned according to a schedule, the schedule should indicate the specific dates on which or the beginning date of each 14-day period during which any separations are expected to occur. Where a 14-day period is used, notice must be given at least 60 days in advance of the first day of the period.

(c) Notice to each representative of affected employees is to contain:

(1) The name and address of the employment site where the office closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information;

(2) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire office is to be closed, a statement to that effect;

(3) The expected date of the first separation and the anticipated schedule for making separations;

(4) The job titles of positions to be affected and the names of the workers currently holding affected jobs.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

(d) Notice to each affected employee who does not have a representative is to be written in language understandable to the employees and is to contain:

(1) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire office is to be closed, a statement to that effect;

(2) The expected date when the office closing or mass layoff will commence and the expected date when the individual employee will be separated;

(3) An indication whether or not bumping rights exist;

(4) The name and telephone number of a company official to contact for further information.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

§639.8 How is the notice served?

Any reasonable method of delivery to the parties listed under §639.6 of this part which is designed to ensure receipt of notice of at least 60 days before separation is acceptable (e.g., first class mail, personal delivery with optional signed receipt). In the case of notification directly to affected employees, insertion of notice into pay envelopes is another viable option. A ticketed notice, i.e., preprinted notice regularly included in each employee's pay check or pay envelope, does not meet the requirements of WARN.

§639.9 When may notice be given less than 60 days in advance?

Section 3(b) of WARN, applied by section 205 of the CAA, sets forth two conditions under which the notification period may be reduced to less than 60 days. The employing office bears the burden of proof that conditions for the exception have been met. If one of the exceptions is applicable, the employing office must give as much notice as is practicable to the union and non-represented employees and this may, in some circumstances, be notice after the fact. The employing office must, at the time notice actually is given, provide a brief statement of the reason for reducing the notice period, in addition to the other elements set out in §639.7.

(a) The ''unforeseeable business circumstances'' exception under section 3(b)(2)(A) of WARN, as applied under the CAA, applies to office closings and mass layoffs caused by circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required.

(1) An important indicator of a circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employing office's control.

(2) The test for determining when circumstances are not reasonably foreseeable focuses on an employing office's business judgment. The employing office must exercise such reasonable business judgment as would a similarly situated employing office in predicting the demands of its operations. The employing office is not required, however, to accurately predict general economic conditions that also may affect its operations.

(b) The ''natural disaster'' exception in section 3(b)(2)(B) of WARN applies to office

closings and mass layoffs due to any form of a natural disaster.

(1) Floods, earthquakes, droughts, storms, tidal waves or tsunamis and similar effects of nature are natural disasters under this provision.

(2) To qualify for this exception, an employing office must be able to demonstrate that its office closing or mass layoff is a direct result of a natural disaster.

(3) While a disaster may preclude full or any advance notice, such notice as is practicable, containing as much of the information required in §639.7 as is available in the circumstances of the disaster still must be given, whether in advance or after the fact of an employment loss caused by a natural disaster.

(4) Where an office closing or mass layoff occurs as an indirect result of a natural disaster, the exception does not apply but the ''unforeseeable business circumstance'' exception described in paragraph (a) of this section may be applicable.

§639.10 When may notice be extended?

Additional notice is required when the date or schedule of dates of a planned office closing or mass layoff is extended beyond the date or the ending date of any 14-day period announced in the original notice as follows:

(a) If the postponement is for less than 60 days, the additional notice should be given as soon as possible to the parties identified in §639.6 and should include reference to the earlier notice, the date (or 14-day period) to which the planned action is postponed, and the reasons for the postponement. The notice should be given in a manner which will provide the information to all affected employees.

(b) If the postponement is for 60 days or more, the additional notice should be treated as new notice subject to the provisions of §§639.5, 639.6, and 639.7 of this part. Rolling notice, in the sense of routine periodic notice, given whether or not an office closing or mass layoff is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable.

OFFICE OF COMPLIANCE

The Congressional Accountability Act of 1995: Extension of Rights and Protections Under the Employee Polygraph Protection Act of 1988

Notice of proposed rulemaking

Summary: The Board of Directors of the Office of Compliance is publishing proposed regulations to implement Sections 204 (a) and (b) of the Congressional Accountability Act of 1995 (''CAA'') to employees of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The CAA applies the rights and protections of eleven labor and employment and statutes to covered employees within the legislative branch. Section 204(a) provides that no employing may require any covered employee (including a covered employee who does not work in that employing office) to take a lie detector test where such test would be prohibited if required by an employer under paragraphs (1), (2) or (3) of section 3 of the Employee Polygraph Protection Act of 1988 (''EPPA''), 29 U.S.C. §2002 (1), (2) or (3). 2 U.S.C. §1314(a). Section 204(a) of the CAA also applies the waiver provision of section 6(d) of the EPPA (29 U.S.C. §2005(d)) to covered employees. Id. The provisions of section 204 are effective January 23, 1996, one year after the enactment date of the CAA, for all employing offices except the General Accounting Office and the Library of Congress. 2 U.S.C. §1314(d). Accordingly, this notice does not include rules applicable to the General Accounting Office or the Library of Congress.

The purpose of these regulations is to implement section 204 of the CAA, which provides protection for most covered employees from lie detector testing, either pre-employment or during the course of employment, with certain limited exceptions. This notice proposes that substantially similar regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities; and their employees. Accordingly:

(1) Senate. It is proposed that regulations as described in this notice be included in the body of regulations that shall apply to the Senate and employees of the Senate, and this proposal regarding the Senate and its employees is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) House of Representatives. It is further proposed that regulations as described in this notice be included in the body of regulations that shall apply to the House of Representatives and employees of the House of Representatives, and this proposal regarding the House of Representatives and its employees is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) Certain Congressional instrumentalities. It is further proposed that regulations as described in this notice be included in the body of regulations that shall apply to the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment, and their employees; and this proposal regarding these seven Congressional instrumentalities is recommended by the Office of Compliance's Executive Director.

Dates: Comments are due within 30 days after the date of publication of this notice in the Congressional Record.

Addresses: Submit written comments to the Chair of the Board of Directors, Office of Compliance, Room LA 200, Library of Congress, 110 Second Street, S.E., Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 252–3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Building, 101 Independence Avenue, S.E., Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Executive Director, Office of Compliance, at (202) 252–3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Services Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, at (202) 244–2705.

Supplementary information:

Background and summary

The Congressional Accountability Act of 1995 (''CAA''), P.L. 104–1, 109 Stat. 3, was enacted on January 23, 1995. 2 U.S.C. §§1301–1438. In general, the CAA applies the rights and protections of eleven federal labor and employment and public access statutes to covered employees and employing offices within the legislative branch. Section 204(a) of the CAA provides that no employing office may require any covered employee (including a covered employee who does not work in that employing office) to take a lie detector test where such test would be prohibited if required by an employer under paragraphs (1), (2) or (3) of section 3 of the Employee Polygraph Protection Act of 1988, 29 U.S.C. §2002 (1), (2) or (3) (''EPPA''). 2 U.S.C. §1314(a). Section 204(a) of the EPPA also applies the waiver provisions of section 6(d) of the EPPA (29 U.S.C. §2005(d)) to covered employees. Id. Section 225(f) of the CAA provides that, ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of the [EPPA] shall apply under this Act.'' 2 U.S.C. §1361(f)(1). Section 204(c) of the CAA requires the Board of Directors of the Office of Compliance established under the CAA to issue regulations implementing the section. 2 U.S.C. §1314(c). Section 204(c) further states that such regulations ''shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' Id.

The regulations in this Part are divided into three subparts. Subpart A contains the provisions generally applicable to covered employing offices, including the requirements relating to the prohibitions on lie detector use. Subpart B sets forth rules regarding the statutory exemptions from application of the rights and protections of the EPPA. Subpart C sets forth the restrictions on lie detector usage under such exemptions. Subpart D sets forth the rules on recordkeeping and the disclosure of polygraph test information.

In preparing the proposed regulations, the Board has considered the comments submitted in response to the Board's general Advance Notice of Proposed Rulemaking published at 141 Cong. Rec. S14542 (daily ed. Sept. 28, 1995), regarding regulations that the Board should issue in this area. In developing these proposed Regulations, a number of issues have been identified and explored. The Board proposes to resolve these issues as described below, and it particularly invites comments on the following issues:

(1) Notice posting and recordkeeping requirements. The CAA incorporates only the prohibitions on the use of lie detector tests contained in paragraphs (1), (2) and (3) of section 3 of the EPPA (prohibiting use of lie detectors subject to limited exceptions), the waiver provisions of section 6(d) of the EPPA, the civil action remedies provision of section 6(c)(1) of the EPPA, and the exemptions and definitions of the EPPA (to the extent appropriate and not inconsistent with exemptions and definitions in the CAA). See sections 204(a), (b) and 225(f) of the CAA, 2 U.S.C. §§1314(a), (b) and 1361(f)(1). As a result, the provisions of sections 4 (directing the Secretary to prepare a notice of the provisions of the EPPA and requiring employers to post such notices), and 5 (authorizing the Secretary to issue regulations, make investigations and require recordkeeping) of the EPPA, 29 U.S.C. §§2003, 2004, are not incorporated into the CAA.

On September 28, 1995, the Board issued an Advance Notice of Proposed Rulemaking (''ANPR'') for publication in the Congressional Record which invited comments regarding whether and to what extent the Board should impose notice posting and recordkeeping requirements on employing offices. After considering the comments received, the Board has concluded that the CAA does not incorporate the notice and recordkeeping requirements of the EPPA and that, as a consequence, such requirements

may not be imposed at this time under the ''good cause'' provision under section 204(c). See Notice of Proposed Rulemaking on the Fair Labor Standards Act submitted concurrently with this notice.

The EPPA does contain specific recordkeeping requirements which are included in sections of the EPPA applied by the CAA. Section 8 of the EPPA, 29 U.S.C. §2007, which sets forth the restrictions on the use of exemptions under the EPPA, requires any employer conducting a polygraph test under the ongoing investigations exemption (which is incorporated into the CAA under section 225(f)(1)) to provide a signed a statement to the examinee setting forth the factual basis for testing the particular employees, a copy of which is retained by the employer for at least 3 years. 29 U.S.C. §2006(d)(4)(C). The portions of the Secretary's regulations requiring such recordkeeping (29 C.F.R. §§801.12, 801.26, and 801.30) have been included in the proposed regulations (Sections 1.12, 1.26, and 1.30), but only to the extent that such regulatory provisions are derived from section 8 of the EPPA.

(2) Administrative enforcement. The CAA does not incorporate Section 6(a) and (b) of the EPPA (providing for civil penalties in an administrative enforcement scheme and an administrative civil penalty remedy), 29 U.S.C. §2005. A civil action in federal court or an administrative claim before the Board (following counseling and mediation) is the exclusive means by which covered employees may enforce their EPPA rights and protections. See sections 401–416 of the CAA, 2 U.S.C. §§1401–1416. Therefore, the proposed regulations, consistent with the terms of Section 204 of the CAA, exclude any reference to the Secretary's authority to make investigations and initiate enforcement actions. Consistent with section 204(c)(1) of the CAA, 2 U.S.C. §1314(c)(1), the proposed regulations state that the Board has authority to issue regulations under this section.

(3) Exemptions. Section 225(f) of the CAA, 2 U.S.C. §1361(f), provides that ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions in the laws made applicable by this Act shall apply under this Act.''

(a) Exemption for security services and drug security, drug theft, or drug diversion investigations. Section 7(e) of the EPPA, 29 U.S.C. §2006(e), provides an exemption authorizing the use of polygraph tests, but no other types of lie detector tests, by certain armored car, security alarm, and security guard employers. Section 7(e) is limited by its terms to private employers and the Board is not aware of any employing office whose functions would meet the requirements of the section 7(e) exemption. Therefore, the Board has not included the Secretary's regulations implementing section 7(e) (29 C.F.R. §801.14) as part of its proposed regulations.

Section 7(f) of the EPPA allows certain employers authorized to manufacture, distribute, or dispense controlled substances to use polygraph tests, but no other types of lie detector tests, under certain circumstances. There may be entities within the legislative branch, such as the Office of the Attending Physician, that might have employees whose duties meet the drug security, drug theft or drug diversion investigations exemption. Therefore, the Board's proposed regulation (at section 1.13, infra) includes a modified version of the Secretary's regulations under the drug security, drug theft or drug diversion investigations exemption (29 C.F.R. §801.13) as part of its proposed regulations.

(b) Exemption for national defense and security. Section 7(b) of the EPPA, 29 U.S.C. §2006(b), provides, among other things, that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence functions, to certain employees whose duties involve access to information classified at the level of top secret or designated as being within a special access program under 4.2(a) of Executive Order 12356 (or a successor Executive Order). There may be some employing offices within the legislative branch, such as intelligence committees, that have employees whose duties meet the exemption under section 7(b) of the EPPA. Therefore, the Board proposes a modified version of the Secretary's regulations implementing such exemption (29 C.F.R. §801.11) in its proposed regulations.

(c) FBI contractor exemption. Section 7(c) of the EPPA, 29 U.S.C. §2006(c), exempts Federal Bureau of Investigation contractors from the requirements of the EPPA under certain circumstances. This provision has no apparent applicability to employing offices. Therefore, the Board does not include the Secretary's regulations implementing this provision (29 C.F.R. §801.11(e)) as part of its proposed regulations.

(d) Limited exemption for ongoing investigations. Section 7(d) of the EPPA, 29 U.S.C. §2006(d), provides a limited exemption permitting polygraph tests, but no other types of lie detector tests, in the context of employer investigations involving economic loss or injury to the employer's business, such as theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage. The Board believes that there may be situations where an employing office may be able to meet the exemption under section 7(d). Accordingly, the Board includes the Secretary's regulations implementing this exemption (29 C.F.R. §801.12) as part of its proposed regulations.

(e) Exemption for employees of the Capitol Police. By Notice of Proposed Rulemaking published September 28, 1995 in the Congressional Record, the Board recommended regulations authorizing the Capitol Police to use lie detector tests in certain circumstances. After both appropriate consideration of comments received and further deliberation about the matter, the Board has determined to incorporate such regulations into these proposed regulations. However, this proposed rule adds new section 1.4(e) to make clear it that the regulation excluding the Capitol Police from section 204 of the CAA with respect to its own employees is not a total exemption of the Capitol Police from the prohibitions on the employment-related use of lie detector tests by the Capitol Police. Specifically, section 1.4(e) provides that the Capitol Police may not require covered employees other than Capitol Police employees to take a lie detector test except in circumstances where the Capitol Police administers a lie detector test during the course of an ''ongoing investigation'' by the Capitol Police. This additional language makes clear the Board's intent to prohibit employing offices other than the Capitol Police from administering lie detector tests on their covered employees indirectly through the Capitol Police.

(4) Restrictions on use of exemptions. Section 204(a) provides that no employing office may require a covered employee to take a lie detector test where an employer would be prohibited from requiring such a test under paragraphs (1), (2) or (3) of section 3 of the EPPA, 29 U.S.C. §2002(1), (2) or (3). Section 3 of the EPPA provides that, except as provided in sections 7 and 8 of the EPPA (29 U.S.C. §§2006 and 2007), it shall be unlawful for an employer to require a lie detector test under paragraphs (1), (2) or (3). Thus, the restrictions on the use of exemptions under 29 U.S.C. §2007 are incorporated into section 204 and the Secretary's regulations implementing this section (29 C.F.R. Subpart C) are included in the Board's proposed regulations.

(5) Confidentiality provisions and notice to examinees. Section 204 of the CAA incorporates the restrictions on disclosure set forth in section 9 of the EPPA, 29 U.S.C. §2008, since such restrictions are the conditions on which polygraphs are allowed under the exemptions of section 7 of the EPPA. Accordingly, the Board includes in its proposed regulations (with appropriate modifications) the Secretary of Labor's regulations regarding restrictions on disclosure of polygraph information (29 C.F.R. §801.35). See section 225(f)(1) of the CAA (except where inconsistent with definitions and exemptions provided in the CAA, the definitions and exemptions under the laws made applicable by the CAA apply under the CAA). For the same reasons, the Board includes in its proposed regulations the requirement of the Secretary's regulations that employing offices authorized to conduct polygraph tests under the exemptions established in these regulations to give written notice to the examinee of the confidentiality and other requirements.

(6) Technical and nomenclature changes. The proposed regulations make technical and nomenclature changes, where appropriate, to conform to the provisions of the CAA. See, e.g., 29 C.F.R. §§801.1 (Purpose and scope), 801.2 (Definitions), 801.3 (Coverage).

Recommended method of approval

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 20th day of November, 1995

GLEN D. NAGER,
Chair of the Board
Office of Compliance.

COMPARISON TABLE

This table lists sections of the Secretary of Labor's Regulations under the EPPA with the corresponding section (if any) of the Office of Compliance's proposed Regulations under Section 204 of the CAA.

Secretary of Labor Regulations Code of Federal Regulation Section	Office of Compliance Regulations Section [Modified As Appropriate]
Subpart A—General	
801.1 Purpose and scope	1.1.
801.2 Definitions	1.2.
801.3 Coverage	1.3.
801.4 Prohibitions on lie detector use.	1.4.
801.5 Effect on other laws and agreements.	1.5.
801.6 Notice of protection	1.6.
801.7 Authority of the Secretary.	1.7.
801.8 Employment relationship.	1.8.
Subpart B—Exemptions	
801.10 Exclusion for public sector employees.	1.10 [Exclusion for Capitol Police; public sector employee exclusion not adopted].

Secretary of Labor Regulations Code of Federal Regulation Section	Office of Compliance Regulations Section [Modified As Appropriate]
801.11 Exemption for national defense and security.	1.11.
801.12 Exemption for employers conducting investigations of economic loss or injury.	1.12.
801.13 Exemption for employers authorized to manufacture, distribute, or dispense controlled substances.	1.13.
801.14 Exemption for employers providing security services.	Not Adopted.
Subpart C—Restrictions on Polygraph Usage Under Exemptions	
801.20 Adverse employment action under ongoing investigation exemption.	1.20.
801.21 Adverse employment action under security service and controlled substance exemptions.	1.21 [controlled substance exemption only].
801.22 Rights of examinee—general.	1.22.
801.23 Rights of examinee—pretest phase.	1.23.
801.24 Rights of examinee—actual test phase.	1.24.
801.25 Rights of examinee—post-test phase.	1.25.
801.26 Qualifications of and requirements for examiners.	1.26.
Subpart D—Recordkeeping and Disclosure Requirements	
801.30 Records to be preserved for 3 years.	1.30.
801.35 Disclosure of test information.	1.35.
Subpart E—Enforcement	
801.40–801.75	Not Adopted.
Appendix A to Part 801—Notice to Examinee.	Appendix A—Notice to Examinee.

APPLICATION OF RIGHTS AND PROTECTIONS OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

SUBPART A—GENERAL

Section
1.1 Purpose and scope.
1.2 Definitions.
1.3 Coverage.
1.4 Prohibitions on lie detector use.
1.5 Effect on other laws or agreements.
1.6 Notice of protection.
1.7 Authority of the Board.
1.8 Employment relationship.

SUBPART B—EXEMPTIONS

1.10 Exclusion for employees of the Capitol Police. [Reserved]
1.11 Exemption for national defense and security.
1.12 Exemption for employing offices conducting investigations of economic loss or injury.
1.13 Exemption for employing offices authorized to manufacture, distribute, or dispense controlled substances.

SUBPART C—RESTRICTIONS ON POLYGRAPH USAGE UNDER EXEMPTIONS

1.20 Adverse employment action under ongoing investigation exemption.
1.21 Adverse employment action under controlled substance exemption.
1.22 Rights of examinee—general.
1.23 Rights of examinee—pretest phase.
1.24 Rights of examinee—actual testing phase.
1.25 Rights of examinee—post-test phase.
1.26 Qualifications of and requirements for examiners.

SUBPART D—RECORDKEEPING AND DISCLOSURE REQUIREMENTS

1.30 Records to be preserved for 3 years.
1.35 Disclosure of test information.
Appendix A—Notice to Examinee

Authority: Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1314(c)

SUBPART A—GENERAL

Sec. 1.1 Purpose and scope

Enacted into law on January 23, 1995, the Congressional Accountability Act (''CAA'') directly applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 204(a) of the CAA, 2 U.S.C. §1314(a) provides that no employing office may require any covered employee (including a covered employee who does not work in that employing office) to take a lie detector test where such test would be prohibited if required by an employer under paragraphs (1), (2) or (3) of section 3 of the Employee Polygraph Protection Act of 1988 (EPPA) 29 U.S.C. §2002(1), (2) or (3). The purpose of this part is to set forth the regulations to carry out the provisions of Section 204 of the CAA.

Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on lie detector use. Subpart B sets forth rules regarding the statutory exemptions from application of section 204 of the CAA. Subpart C sets forth the restrictions on polygraph usage under such exemptions. Subpart D sets forth the rules on recordkeeping and the disclosure of polygraph test information.

Sec. 1.2 Definitions

For purposes of this part:

(a) Act or CAA means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) EPPA means the Employee Polygraph Protection Act of 1988 (Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. §§2001–2009) as applied to covered employees and employing offices by Section 204 of the CAA.

(c) The term covered employee means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Congressional Budget Office; (5) the Office of the Architect of the Capitol; (6) the Office of the Attending Physician; (7) the Office of Compliance; or (8) the Office of Technology Assessment.

(d) The term employee includes an applicant for employment and a former employee.

(e) The term employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(f) The term employee of the Capitol Police includes any member or officer of the Capitol Police.

(g) The term employee of the House of Representatives includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(h) The term employee of the Senate includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(i) The term employing office means (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment. The term employing office includes any person acting directly or indirectly in the interest of an employing office in relation to an employee or prospective employee. A polygraph examiner either employed for or whose services are retained for the sole purpose of administering polygraph tests ordinarily would not be deemed an employing office with respect to the examinees. Any reference to ''employer'' in these regulations includes employing offices.

(j)(1) The term lie detector means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. Voice stress analyzers, or psychological stress evaluators, include any systems that utilize voice stress analysis, whether or not an opinion on honesty or dishonesty is specifically rendered.

(2) The term lie detector does not include medical tests used to determine the presence or absence of controlled substances or alcohol in bodily fluids. Also not included in the definition of lie detector are written or oral tests commonly referred to as ''honesty'' or ''paper and pencil'' tests, machine-scored or otherwise; and graphology tests commonly referred to as handwriting tests.

(k) The term polygraph means an instrument that—

(1) Records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(2) Is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(l) Board means the Board of Directors of the Office of Compliance.

(m) Office means the Office of Compliance.

Sec. 1.3 Coverage

The coverage of Section 204 of the Act extends to any ''covered employee'' or ''covered employing office'' without regard to the number of employees or the employing office's effect on interstate commerce.

Sec. 1.4 Prohibitions on lie detector use

(a) Section 204 of the CAA provides that, subject to the exemptions of the EPPA incorporated into the CAA under section 225(f) of the CAA, as set forth in Sec. 1.10 through 1.12 of this Part, employing offices are prohibited from: (1) Requiring, requesting, suggesting or causing, directly or indirectly, any covered employee or prospective employee to take or submit to a lie detector test; (2) Using, accepting, or inquiring about the results of a lie detector test of any covered employee or prospective employee; and (3) Discharging, disciplining, discriminating

against, denying employment or promotion, or threatening any covered employee or prospective employee to take such action for refusal or failure to take or submit to such test, or on the basis of the results of a test. The above prohibitions apply irrespective of whether the covered employee referred to in paragraphs (1), (2) or (3), above, works in that employing office.

(b) An employing office that reports a theft or other incident involving economic loss to police or other law enforcement authorities is not engaged in conduct subject to the prohibitions under paragraph (a) of this section if, during the normal course of a subsequent investigation, such authorities deem it necessary to administer a polygraph test to a covered employee(s) suspected of involvement in the reported incident. Employing offices that cooperate with police authorities during the course of their investigations into criminal misconduct are likewise not deemed engaged in prohibitive conduct provided that such cooperation is passive in nature. For example, it is not uncommon for police authorities to request employees suspected of theft or criminal activity to submit to a polygraph test during the employee's tour of duty since, as a general rule, suspect employees are often difficult to locate away from their place of employment. Allowing a test on the employing office's premises, releasing a covered employee during working hours to take a test at police headquarters, and other similar types of cooperation at the request of the police authorities would not be construed as ''requiring, requesting, suggesting, or causing, directly or indirectly, any covered employee * * * to take or submit to a lie detector test.'' Cooperation of this type must be distinguished from actual participation in the testing of employees suspected of wrongdoing, either through the administration of a test by the employing office at the request or direction of police authorities, or through reimbursement by the employing office of tests administered by police authorities to employees. In some communities, it may be a practice of police authorities to request testing by employing offices of employees before a police investigation is initiated on a reported incident. In other communities, police examiners are available to covered employing offices, on a cost reimbursement basis, to conduct tests on employees suspected by an employing office of wrongdoing. All such conduct on the part of employing offices is deemed within the prohibitions of section 204 of the CAA.

(c) The receipt by an employing office of information from a polygraph test administered by police authorities pursuant to an investigation is prohibited by section 3(2) of the EPPA. (See paragraph (a)(2) of this section.)

(d) The simulated use of a polygraph instrument so as to lead an individual to believe that an actual test is being or may be performed (e.g., to elicit confessions or admissions of guilt) constitutes conduct prohibited by paragraph (a) of this section. Such use includes the connection of a covered employee or prospective employee to the instrument without any intention of a diagnostic purpose, the placement of the instrument in a room used for interrogation unconnected to the covered employee or prospective employee, or the mere suggestion that the instrument may be used during the course of the interview.

(e) The Capitol Police may not require a covered employee not employed by the Capitol Police to take a lie detector test (on its own initiative or at the request of another employing office) except where the Capitol Police administers such lie detector test as part of an ''ongoing investigation'' by the Capitol Police. For the purpose of this subsection, the definition of ''ongoing investigation'' contained section 1.12(b) shall apply.

Sec. 1.5 Effect on other laws or agreements

(a) Section 204 of the CAA does not preempt any otherwise applicable provision of federal law or any rule or regulation of the House or Senate or any negotiated collective bargaining agreement that prohibits lie detector tests or is more restrictive with respect to the use of lie detector tests.

(b)(1) This provision applies to all aspects of the use of lie detector tests, including procedural safeguards, the use of test results, the rights and remedies provided examinees, and the rights, remedies, and responsibilities of examiners and employing offices. (2) For example, a collective bargaining agreement that provides greater protection to an examinee would apply in addition to the protection provided in section 204 of the CAA.

Sec. 1.6 Notice of protection

Pursuant to section 301(h) of the CAA, the Office shall prepare, in a manner suitable for posting, a notice explaining the provisions of section 204 of the CAA. Copies of such notice may be obtained from the Office of Compliance.

Sec. 1.7 Authority of the Board

Pursuant to sections 204 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections of the EPPA.

Sec. 1.8 Employment relationship

Subject to the exemptions incorporated into the CAA by section 225(f), section 204 applies the prohibitions on the use of lie detectors by employing offices with respect to covered employees irrespective of whether a covered employee works in that employing office. Sections 101 (3), (4) and 204 of the CAA also apply EPPA prohibitions against discrimination to applicants for employment and former employees of a covered employing office. For example, an employee may quit rather than take a lie detector test. The employing office cannot discriminate or threaten to discriminate in any manner against that person (such as by providing bad references in the future) because of that person's refusal to be tested. Similarly, an employing office cannot discriminate or threaten to discriminate in any manner against that person because that person files a complaint, institutes a proceeding, testifies in a proceeding, or exercises any right under section 204 of the CAA. (*See* section 207 of the CAA.)

SUBPART B—EXEMPTIONS

Sec. 1.10 Exclusion for employees of the Capitol Police

[Reserved]

Sec. 1.11 Exemption for national defense and security

(a) The exemptions allowing for the administration of lie detector tests in the following paragraphs (b) through (e) of this section apply only to the Federal Government; they do not allow covered employing offices to administer such tests. For the purposes of this section, the term ''Federal Government'' means any agency or entity within the Federal Government authorized to administer polygraph examinations which is otherwise exempt from coverage under section 7(a) of the EPPA, 29 U.S.C. §2006(a).

(b) Section 7(b)(2)(B) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function, to any covered employee whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2 (a) of Executive Order 12356 (or a successor Executive Order).

(c) Counterintelligence for purposes of the above paragraphs means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, terrorist activities, or assassinations conducted for or on behalf of foreign governments, or foreign or domestic organizations or persons.

(d) Lie detector tests of persons described in the above paragraphs will be administered in accordance with applicable Department of Defense directives and regulations, or other regulations and directives governing the use of such tests by the United States Government, as applicable.

Sec. 1.12 Exemption for employing offices conducting investigations of economic loss or injury

(a) Section 7(d) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides a limited exemption from the general prohibition on lie detector use for employers conducting ongoing investigations of economic loss or injury to the employer's business. An employing office may request an employee, subject to the conditions set forth in sections 8 and 10 of the EPPA and Secs. 1.20, 1.22, 1.23, 1.24, 1.25, 1.26 and 1.35 of this part, to submit to a polygraph test, but no other type of lie detector test, only if—

(1) The test is administered in connection with an ongoing investigation involving economic loss or injury to the employing office's business, such as theft, embezzlement, misappropriation or an act of unlawful industrial espionage or sabotage;

(2) The employee had access to the property that is the subject of the investigation;

(3) The employing office has a reasonable suspicion that the employee was involved in the incident or activity under investigation;

(4) The employing office provides the examinee with a statement, in a language understood by the examinee, prior to the test which fully explains with particularity the specific incident or activity being investigated and the basis for testing particular employees and which contains, at a minimum:

(i) An identification with particularity of the specific economic loss or injury to the business of the employing office;

(ii) A description of the employee's access to the property that is the subject of the investigation;

(iii) A description in detail of the basis of the employing office's reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(iv) Signature of a person (other than a polygraph examiner) authorized to legally bind the employing office; and

(5) The employing office retains a copy of the statement and proof of service described in paragraph (a)(4) of this section for at least 3 years.

(b) For the exemption to apply, the condition of an ''ongoing investigation'' must be met. As used in section 7(d) of the EPPA, the ongoing investigation must be of a specific incident or activity. Thus, for example, an employing office may not request that an employee or employees submit to a polygraph test in an effort to determine whether or not any thefts have occurred. Such random testing by an employing office is precluded by the EPPA. Further, because the exemption is limited to a specific incident or activity, an employing office is precluded from using the exemption in situations where the so-called ''ongoing investigation'' is continuous. For example, the fact that

items in inventory are frequently missing from a warehouse would not be a sufficient basis, standing alone, for administering a polygraph test. Even if the employing office can establish that unusually high amounts of inventory are missing from the warehouse in a given month, this, in and of itself, would not be a sufficient basis to meet the specific incident requirement. On the other hand, polygraph testing in response to inventory shortages would be permitted where additional evidence is obtained through subsequent investigation of specific items missing through intentional wrongdoing, and a reasonable suspicion that the employee to be polygraphed was involved in the incident under investigation. Administering a polygraph test in circumstances where the missing inventory is merely unspecified, statistical shortages, without identification of a specific incident or activity that produced the inventory shortages and a ''reasonable suspicion that the employee was involved,'' would amount to little more than a fishing expedition and is prohibited by the EPPA as applied to covered employees and employing offices by the CAA.

(c)(1)(i) The terms economic loss or injury to the employer's business include both direct and indirect economic loss or injury.

(ii) Direct loss or injury includes losses or injuries resulting from theft, embezzlement, misappropriation, industrial espionage or sabotage. These examples, cited in the EPPA, are intended to be illustrative and not exhaustive. Another specific incident which would constitute direct economic loss or injury is the misappropriation of confidential or trade secret information.

(iii) Indirect loss or injury includes the use of an employer's business to commit a crime, such as check-kiting or money laundering. In such cases, the ongoing investigation must be limited to criminal activity that has already occurred, and to use of the employing office's business operations (and not simply the use of the premises) for such activity. For example, the use of an employing office's vehicles, warehouses, computers or equipment to smuggle or facilitate the importing of illegal substances constitutes an indirect loss or injury to the employing office's business operations. Conversely, the mere fact that an illegal act occurs on the employing office's premises (such as a drug transaction that takes place in the employer's parking lot or rest room) does not constitute an indirect economic loss or injury to the employing office.

(iv) Indirect loss or injury also includes theft or injury to property of another for which the employing office exercises fiduciary, managerial or security responsibility, or where the office has custody of the property (but not property of other offices to which the employees have access by virtue of the business relationship). For example, if a maintenance employee of the manager of an apartment building steals jewelry from a tenant's apartment, the theft results in an indirect economic loss or injury to the employer because of the manager's management responsibility with respect to the tenant's apartment. A messenger on a delivery of confidential business reports for a client firm who steals the reports causes an indirect economic loss or injury to the messenger service because the messenger service is custodian of the client firm's reports, and therefore is responsible for their security. Similarly, the theft of property protected by a security service employer is considered an economic loss or injury to that employer.

(v) A theft or injury to a client firm does not constitute an indirect loss or injury to an employer unless that employer has custody of, or management, or security responsibility for, the property of the client that was lost or stolen or injured. For example, a cleaning contractor has no responsibility for the money at a client bank. If money is stolen from the bank by one of the cleaning contractor's employees, the cleaning contractor does not suffer an indirect loss or injury.

(vi) Indirect loss or injury does not include loss or injury which is merely threatened or potential, e.g., a threatened or potential loss of an advantageous business relationship.

(2) Economic losses or injuries which are the result of unintentional or lawful conduct would not serve as a basis for the administration of a polygraph test. Thus, apparently unintentional losses or injuries stemming from truck, car, workplace, or other similar type accidents or routine inventory or cash register shortages would not meet the economic loss or injury requirement. Any economic loss incident to lawful union or employee activity also would not satisfy this requirement.

(3) It is the business of the employer which must suffer the economic loss or injury. Thus, a theft committed by one employee against another employee of the same employer would not satisfy the requirement.

(d) While nothing in the EPPA as applied by the CAA prohibits the use of medical tests to determine the presence of controlled substances or alcohol in bodily fluids, the section 7(d) exemption of the EPPA does not permit the use of a polygraph test to learn whether an employee has used drugs or alcohol, even where such possible use may have contributed to an economic loss to the employer (e.g., an accident involving a company vehicle).

(e) Section 7(d)(2) of the EPPA provides that, as a condition for the use of the exemption, the employee must have had access to the property that is the subject of the investigation.

(1) The word access, as used in section 7(d)(2), refers to the opportunity which an employee had to cause, or to aid or abet in causing, the specific economic loss or injury under investigation. The term ''access'', thus, includes more than direct or physical contact during the course of employment. For example, as a general matter, all employees working in or with authority to enter a warehouse storage area have ''access'' to unsecured property in the warehouse. All employees with the combination to a safe have ''access'' to the property in a locked safe. Employees also have ''access'' who have the ability to divert possession or otherwise affect the disposition of the property that is the subject of investigation. For example, a bookkeeper in a jewelry store with access to inventory records may aid or abet a clerk who steals an expensive watch by removing the watch from the employer's inventory records. In such a situation, it is clear that the bookkeeper effectively has ''access'' to the property that is the subject of the investigation.

(2) As used in section 7(d)(2), property refers to specifically identifiable property, but also includes such things of value as security codes and computer data, and proprietary, financial or technical information, such as trade secrets, which by its availability to competitors or others would cause economic harm to the employer.

(f)(1) As used in section 7(d)(3), the term reasonable suspicion refers to an observable, articulable basis in fact which indicates that a particular employee was involved in, or responsible for, an economic loss. Access in the sense of possible or potential opportunity, standing alone, does not constitute a basis for ''reasonable suspicion.'' Information from a co-worker, or an employee's behavior, demeanor, or conduct may be factors in the basis for reasonable suspicion. Likewise, inconsistencies between facts, claims, or statements that surface during an investigation can serve as a sufficient basis for reasonable suspicion. While access or opportunity, standing alone, does not constitute a basis for reasonable suspicion, the totality of circumstances surrounding the access or opportunity (such as its unauthorized or unusual nature or the fact that access was limited to a single individual) may constitute a factor in determining whether there is a reasonable suspicion.

(2) For example, in an investigation of a theft of an expensive piece of jewelry, an employee authorized to open the establishment's safe no earlier than 9 a.m., in order to place the jewelry in a window display case, is observed opening the safe at 7:30 a.m. In such a situation, the opening of the safe by the employee one and one-half hours prior to the specified time may serve as the basis for reasonable suspicion. On the other hand, in the example given, if the employer asked the employee to bring the piece of jewelry to his or her office at 7:30 a.m., and the employee then opened the safe and reported the jewelry missing, such access, standing alone, would not constitute a basis for reasonable suspicion that the employee was involved in the incident unless access to the safe was limited solely to the employee. If no one other than the employee possessed the combination to the safe, and all other possible explanations for the loss are ruled out, such as a break-in, the employer may formulate a basis for reasonable suspicion based on sole access by one employee.

(3) The employer has the burden of establishing that the specific individual or individuals to be tested are ''reasonably suspected'' of involvement in the specific economic loss or injury for the requirement in section 7(d)(3) of the EPPA to be met.

(g)(1) As discussed in paragraph (a)(4) of this section, section 7(d)(4) of the EPPA sets forth what information, at a minimum, must be provided to an employee if the employer wishes to claim the exemption.

(2) The statement required under paragraph (a)(4) of this section must be received by the employee at least 48 hours, excluding weekend days and holidays, prior to the time of the examination. The statement must set forth the time and date of receipt by the employee and be verified by the employee's signature. This will provide the employee with adequate pre-test notice of the specific incident or activity being investigated and afford the employee sufficient time prior to the test to obtain and consult with legal counsel or an employee representative.

(3) The statement to be provided to the employee must set forth with particularity the specific incident or activity being investigated and the basis for testing particular employees. Section 7(d)(4)(A) of the EPPA requires specificity beyond the mere assertion of general statements regarding economic loss, employee access, and reasonable suspicion. For example, an employer's assertion that an expensive watch was stolen, and that the employee had access to the watch and is therefore a suspect, would not meet the ''with particularity'' criterion. If the basis for an employer's requesting an employee (or employees) to take a polygraph test is not articulated with particularity, and reduced to writing, then the standard is not met. The identity of a co-worker or other individual providing information used to establish reasonable suspicion need not be revealed in the statement.

(4) It is further required that the statement provided to the examinee be signed by the employer, or an employee or other representative of the employer with authority to legally bind the employer. The person

signing the statement must not be a polygraph examiner unless the examiner is acting solely in the capacity of an employer with respect to his or her own employees and does not conduct the examination. The standard would not be met, and the exemption would not apply if the person signing the statement is not authorized to legally bind the employer.

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the EPPA, as discussed in Secs. 1.20, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employing office to remedial actions, as provided for in section 6(c) of the EPPA.

Sec. 1.13 Exemption of employers authorized to manufacture, distribute, or dispense controlled substances

(a) Section 7(f) of the EPPA, incorporated into the CAA by section 225(f) of the CAA, provides an exemption from the EPPA's general prohibition regarding the use of polygraph tests for employers authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. §812). This exemption permits the administration of polygraph tests, subject to the conditions set forth in sections 8 and 10 of the EPPA and Sec. 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part, to:

(1) A prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(2) A current employee if the following conditions are met:

(i) The test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer; and

(ii) The employee had access to the person or property that is the subject of the investigation.

(b)(1) The terms manufacture, distribute, distribution, dispense, storage, and sale, for the purposes of this exemption, are construed within the meaning of the Controlled Substances Act (21 U.S.C. §812 et seq.), as administered by the Drug Enforcement Administration (DEA), U.S. Department of Justice.

(2) The exemption in section 7(f) of the EPPA applies only to employers who are authorized by DEA to manufacture, distribute, or dispense a controlled substance. Section 202 of the Controlled Substances Act (21 U.S.C. §812) requires every person who manufactures, distributes, or dispenses any controlled substance to register with the Attorney General (i.e., with DEA). Common or contract carriers and warehouses whose possession of the controlled substance is in the usual course of their business or employment are not required to register. Truck drivers and warehouse employees of the persons or entities registered with DEA and authorized to manufacture, distribute, or dispense controlled substances, are within the scope of the exemption where they have direct access or access to the controlled substances, as discussed below.

(c) In order for a polygraph examination to be performed, section 7(f) of the Act requires that a prospective employee have ''direct access'' to the controlled substance(s) manufactured, dispensed, or distributed by the employer. Where a current employee is to be tested as a part of an ongoing investigation, section 7(f) requires that the employee have ''access'' to the person or property that is the subject of the investigation.

(1) A prospective employee would have ''direct access'' if the position being applied for has responsibilities which include contact with or which affect the disposition of a controlled substance, including participation in the process of obtaining, dispensing, or otherwise distributing a controlled substance. This includes contact or direct involvement in the manufacture, storage, testing, distribution, sale or dispensing of a controlled substance and may include, for example, packaging, repackaging, ordering, licensing, shipping, receiving, taking inventory, providing security, prescribing, and handling of a controlled substance. A prospective employee would have ''direct access'' if the described job duties would give such person access to the products in question, whether such employee would be in physical proximity to controlled substances or engaged in activity which would permit the employee to divert such substances to his or her possession.

(2) A current employee would have ''access'' within the meaning of section 7(f) if the employee had access to the specific person or property which is the subject of the on-going investigation, as discussed in Sec. 1.12(e) of this part. Thus, to test a current employee, the employee need not have had ''direct'' access to the controlled substance, but may have had only infrequent, random, or opportunistic access. Such access would be sufficient to test the employee if the employee could have caused, or could have aided or abetted in causing, the loss of the specific property which is the subject of the investigation. For example, a maintenance worker in a drug warehouse, whose job duties include the cleaning of areas where the controlled substances which are the subject of the investigation were present, but whose job duties do not include the handling of controlled substances, would be deemed to have ''access'', but normally not ''direct access'', to the controlled substances. On the other hand, a drug warehouse truck loader, whose job duties include the handling of outgoing shipment orders which contain controlled substances, would have ''direct access'' to such controlled substances. A pharmacy department in a supermarket is another common situation which is useful in illustrating the distinction between ''direct access'' and ''access.'' Store personnel receiving pharmaceutical orders, i.e., the pharmacist, pharmacy intern, and other such employees working in the pharmacy department, would ordinarily have ''direct access'' to controlled substances. Other store personnel whose job duties and responsibilities do not include the handling of controlled substances but who had occasion to enter the pharmacy department where the controlled substances which are the subject of the investigation were stored, such as maintenance personnel or pharmacy cashiers, would have ''access.'' Certain other store personnel whose job duties do not permit or require entrance into the pharmacy department for any reason, such as produce or meat clerks, checkout cashiers, or baggers, would not ordinarily have ''access.'' However, any current employee, regardless of described job duties, may be polygraphed if the employer's investigation of criminal or other misconduct discloses that such employee in fact took action to obtain ''access'' to the person or property that is the subject of the investigation—e.g., by actually entering the drug storage area in violation of company rules. In the case of ''direct access'', the prospective employee's access to controlled substances would be as a part of the manufacturing, dispensing or distribution process, while a current employee's ''access'' to the controlled substances which are the subject of the investigation need only be opportunistic.

(d) The term prospective employee, for the purposes of this section, includes a current employee who presently holds a position which does not entail direct access to controlled substances, and therefore is outside the scope of the exemption's provisions for preemployment polygraph testing, provided the employee has applied for and is being considered for transfer or promotion to another position which entails such direct access. For example, an office secretary may apply for promotion to a position in the vault or cage areas of a drug warehouse, where controlled substances are kept. In such a situation, the current employee would be deemed a ''prospective employee'' for the purposes of this exemption, and thus could be subject to preemployment polygraph screening, prior to such a change in position. However, any adverse action which is based in part on a polygraph test against a current employee who is considered a ''prospective employee'' for purposes of this section may be taken only with respect to the prospective position and may not affect the employee's employment in the current position.

(e) Section 7(f) of the EPPA makes no specific reference to a requirement that employers provide current employees with a written statement prior to polygraph testing. Thus, employers to whom this exemption is available are not required to furnish a written statement such as that specified in section 7(d) of the EPPA and Sec. 1.12(a)(4) of this part.

(f) For the section 7(f) exemption to apply, the polygraph testing of current employees must be administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer.

(1) Current employees may only be administered polygraph tests in connection with an ongoing investigation of criminal or other misconduct, relating to a specific incident or activity, or potential incident or activity. Thus, an employer is precluded from using the exemption in connection with continuing investigations or on a random basis to determine if thefts are occurring. However, unlike the exemption in section 7(d) of the EPPA for employers conducting ongoing investigations of economic loss or injury, the section 7(f) exemption includes ongoing investigations of misconduct involving potential drug losses. Nor does the latter exemption include the requirement for ''reasonable suspicion'' contained in the section 7(d) exemption. Thus, a drug store employer is permitted to polygraph all current employees who have access to a controlled substance stolen from the inventory, or where there is evidence that such a theft is planned. Polygraph testing based on an inventory shortage of the drug during a particular accounting period would not be permitted unless there is extrinsic evidence of misconduct.

(2) In addition, the test must be administered in connection with loss or injury, or potential loss or injury, to the manufacture, distribution, or dispensing of a controlled substance.

(i) Retail drugstores and wholesale drug warehouses typically carry inventory of so-called health and beauty aids, cosmetics, over-the-counter drugs, and a variety of other similar products, in addition to their product lines of controlled drugs. The non-controlled products usually constitute the majority of such firms' sales volumes. An economic loss or injury related to such

noncontrolled substances would not constitute a basis of applicability of the section 7(f) exemption. For example, an investigation into the theft of a gross of cosmetic products could not be a basis for polygraph testing under section 7(f), but the theft of a container of valium could be.

(ii) Polygraph testing, with respect to an ongoing investigation concerning products other than controlled substances might be initiated under section 7(d) of the EPPA and Sec. 1.12 of this part. However, the exemption in section 7(f) of the EPPA and this section is limited solely to losses or injury associated with controlled substances.

(g) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the EPPA, as discussed in Secs. 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employer to the remedial actions authorized in section 204 of the CAA. The administration of such tests is also subject to collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

SUBPART C—RESTRICTIONS ON POLYGRAPH USAGE UNDER EXEMPTIONS

Sec. 1.20 Adverse employment action under ongoing investigation exemption

(a) Section 8(a) (1) of the EPPA provides that the limited exemption in section 7(d) of the EPPA and Sec. 1.12 of this part for ongoing investigations shall not apply if an employer discharges, disciplines, denies employment or promotion or otherwise discriminates in any manner against a current employee based upon the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence.

(b) ''Additional supporting evidence'', for purposes of section 8(a) of the EPPA, includes, but is not limited to, the following:

(1)(i) Evidence indicating that the employee had access to the missing or damaged property that is the subject of an ongoing investigation; and

(ii) Evidence leading to the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation; or

(2) Admissions or statements made by an employee before, during or following a polygraph examination.

(c) Analysis of a polygraph test chart or refusal to take a polygraph test may not serve as a basis for adverse employment action, even with additional supporting evidence, unless the employer observes all the requirements of sections 7(d) and 8(b) of the EPPA, as described in Secs. 1.12, 1.22, 1.23, 1.24 and 1.25 of this part.

Sec. 1.21 Adverse employment action under controlled substance exemption

(a) Section 8(a)(2) of the EPPA provides that the controlled substance exemption in section 7(f) of the EPPA and section 1.13 of this part shall not apply if an employing office discharges, disciplines, denies employment or promotion, or otherwise discriminates in any manner against a current employee or prospective employee based solely on the analysis of a polygraph test chart or the refusal to take a polygraph test.

(b) Analysis of a polygraph test chart or refusal to take a polygraph test may serve as one basis for adverse employment actions of the type described in paragraph (a) of this section, provided that the adverse action was also based on another bona fide reason, with supporting evidence therefor. For example, traditional factors such as prior employment experience, education, job performance, etc. may be used as a basis for employment decisions. Employment decisions based on admissions or statements made by an employee or prospective employee before, during or following a polygraph examination may, likewise, serve as a basis for such decisions.

(c) Analysis of a polygraph test chart or the refusal to take a polygraph test may not serve as a basis for adverse employment action, even with another legitimate basis for such action, unless the employing office observes all the requirements of section 7(f) of the EPPA, as appropriate, and section 8(b) of the EPPA, as described in sections 1.13, 1.22, 1.23, 1.24 and 1.25 of this part.

Sec. 1.22 Rights of examinee—general

(a) Pursuant to section 8(b) of the EPPA, the limited exemption in section 7(d) of the EPPA for ongoing investigations (described in Sec. 1.12 of this part) shall not apply unless all of the requirements set forth in this section and Secs. 1.23 through 1.25 of this part are met.

(b) During all phases of the polygraph testing the person being examined has the following rights:

(1) The examinee may terminate the test at any time.

(2) The examinee may not be asked any questions in a degrading or unnecessarily intrusive manner.

(3) The examinee may not be asked any questions dealing with:

(i) Religious beliefs or affiliations;

(ii) Beliefs or opinions regarding racial matters;

(iii) Political beliefs or affiliations;

(iv) Sexual preferences or behavior; or

(v) Beliefs, affiliations, opinions, or lawful activities concerning unions or labor organizations.

(4) The examinee may not be subjected to a test when there is sufficient written evidence by a physician that the examinee is suffering from any medical or psychological condition or undergoing any treatment that might cause abnormal responses during the actual testing phase. ''Sufficient written evidence'' shall constitute, at a minimum, a statement by a physician specifically describing the examinee's medical or psychological condition or treatment and the basis for the physician's opinion that the condition or treatment might result in such abnormal responses.

(5) An employee or prospective employee who exercises the right to terminate the test, or who for medical reasons with sufficient supporting evidence is not administered the test, shall be subject to adverse employment action only on the same basis as one who refuses to take a polygraph test, as described in Secs. 1.20 and 1.21 of this part.

(c) Any polygraph examination shall consist of one or more pretest phases, actual testing phases, and post-test phases, which must be conducted in accordance with the rights of examinees described in Secs. 1.23 through 1.25 of this part.

Sec. 1.23 Rights of examinee—pretest phase

(a) The pretest phase consists of the questioning and other preparation of the prospective examinee before the actual use of the polygraph instrument. During the initial pretest phase, the examinee must be:

(1) Provided with written notice, in a language understood by the examinee, as to when and where the examination will take place and that the examinee has the right to consult with counsel or an employee representative before each phase of the test. Such notice shall be received by the examinee at least forty-eight hours, excluding weekend days and holidays, before the time of the examination, except that a prospective employee may, at the employee's option, give written consent to administration of a test anytime within 48 hours but no earlier than 24 hours after receipt of the written notice. The written notice or proof of service must set forth the time and date of receipt by the employee or prospective employee and be verified by his or her signature. The purpose of this requirement is to provide a sufficient opportunity prior to the examination for the examinee to consult with counsel or an employee representative. Provision shall also be made for a convenient place on the premises where the examination will take place at which the examinee may consult privately with an attorney or an employee representative before each phase of the test. The attorney or representative may be excluded from the room where the examination is administered during the actual testing phase.

(2) Informed orally and in writing of the nature and characteristics of the polygraph instrument and examination, including an explanation of the physical operation of the polygraph instrument and the procedure used during the examination.

(3) Provided with a written notice prior to the testing phase, in a language understood by the examinee, which shall be read to and signed by the examinee. Use of Appendix A to this part, if properly completed, will constitute compliance with the contents of the notice requirement of this paragraph. If a format other than in Appendix A is used, it must contain at least the following information:

(i) Whether or not the polygraph examination area contains a two-way mirror, a camera, or other device through which the examinee may be observed;

(ii) Whether or not any other device, such as those used in conversation or recording will be used during the examination;

(iii) That both the examinee and the employing office have the right, with the other's knowledge, to make a recording of the entire examination;

(iv) That the examinee has the right to terminate the test at any time;

(v) That the examinee has the right, and will be given the opportunity, to review all questions to be asked during the test;

(vi) That the examinee may not be asked questions in a manner which degrades, or needlessly intrudes;

(vii) That the examinee may not be asked any questions concerning religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations;

(viii) That the test may not be conducted if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination;

(ix) That the test is not and cannot be required as a condition of employment;

(x) That the employing office may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test, or based on the examinee's refusal to take such a test, without additional evidence which would support such action;

(xi)(A) In connection with an ongoing investigation, that the additional evidence required for the employing office to take adverse action against the examinee, including termination, may be evidence that the examinee had access to the property that is the subject of the investigation, together with

evidence supporting the employer's reasonable suspicion that the examinee was involved in the incident or activity under investigation;

(B) That any statement made by the examinee before or during the test may serve as additional supporting evidence for an adverse employment action, as described in paragraph (a)(3)(x) of this section, and that any admission of criminal conduct by the examinee may be transmitted to an appropriate government law enforcement agency;

(xii) That information acquired from a polygraph test may be disclosed by the examiner or by the employing office only:

(A) To the examinee or any other person specifically designated in writing by the examinee to receive such information;

(B) To the employing office that requested the test;

(C) To a court, governmental agency, arbitrator, or mediator pursuant to a court order;

(D) By the employing office, to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct;

(xiii) That if any of the examinee's rights or protections under the law are violated, the examinee has the right to take action against the employing office under sections 401–404 of the CAA. Employing offices that violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees;

(xiv) That the examinee has the right to obtain and consult with legal counsel or other representative before each phase of the test, although the legal counsel or representative may be excluded from the room where the test is administered during the actual testing phase.

(xv) That the employee's rights under the EPPA may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the EPPA, agreed to and signed by the parties.

(b) During the initial or any subsequent pretest phases, the examinee must be given the opportunity, prior to the actual testing phase, to review all questions in writing that the examiner will ask during each testing phase. Such questions may be presented at any point in time prior to the testing phase.

Sec. 1.24 Rights of examinee—actual testing phase

(a) The actual testing phase refers to that time during which the examiner administers the examination by using a polygraph instrument with respect to the examinee and then analyzes the charts derived from the test. Throughout the actual testing phase, the examiner shall not ask any question that was not presented in writing for review prior to the testing phase. An examiner may, however, recess the testing phase and return to the pre-test phase to review additional relevant questions with the examinee. In the case of an ongoing investigation, the examiner shall ensure that all relevant questions (as distinguished from technical baseline questions) pertain to the investigation.

(b) No testing period subject to the provisions of the Act shall be less than ninety minutes in length. Such ''test period'' begins at the time that the examiner begins informing the examinee of the nature and characteristics of the examination and the instruments involved, as prescribed in section 8(b)(2)(B) of the EPPA and Sec. 1.23(a)(2) of this part, and ends when the examiner completes the review of the test results with the examinee as provided in Sec. 1.25 of this part. The ninety-minute minimum duration shall not apply if the examinee voluntarily acts to terminate the test before the completion thereof, in which event the examiner may not render an opinion regarding the employee's truthfulness.

Sec. 1.25 Rights of examinee—post-test phase

(a) The post-test phase refers to any questioning or other communication with the examinee following the use of the polygraph instrument, including review of the results of the test with the examinee. Before any adverse employment action, the employing office must:

(1) Further interview the examinee on the basis of the test results; and

(2) Give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses. The term ''corresponding charted responses'' refers to copies of the entire examination charts recording the employee's physiological responses, and not just the examiner's written report which describes the examinee's responses to the questions as ''charted'' by the instrument.

Sec. 1.26 Qualifications of and requirements for examiners

(a) Section 8 (b) and (c) of the EPPA provides that the limited exemption in section 7(d) of the EPPA for ongoing investigations shall not apply unless the person conducting the polygraph examination meets specified qualifications and requirements.

(b) An examiner must meet the following qualifications:

(1) Have a valid current license, if required by the State in which the test is to be conducted; and

(2) Carry a minimum bond of $50,000 provided by a surety incorporated under the laws of the United States or of any State, which may under those laws guarantee the fidelity of persons holding positions of trust, or carry an equivalent amount of professional liability coverage.

(c) An examiner must also, with respect to examinees identified by the employing office pursuant to Sec. 1.30(c) of this part:

(1) Observe all rights of examinees, as set out in Secs. 1.22, 1.23, 1.24, and 1.25 of this part;

(2) Administer no more than five polygraph examinations in any one calendar day on which a test or tests subject to the provisions of EPPA are administered, not counting those instances where an examinee voluntarily terminates an examination prior to the actual testing phase;

(3) Administer no polygraph examination subject to the provisions of the EPPA which is less than ninety minutes in duration, as described in Sec. 1.24(b) of this part; and

(4) Render any opinion or conclusion regarding truthfulness or deception in writing. Such opinion or conclusion must be based solely on the polygraph test results. The written report shall not contain any information other than admissions, information, case facts, and interpretation of the charts relevant to the stated purpose of the polygraph test and shall not include any recommendation concerning the employment of the examinee.

(5) Maintain all opinions, reports, charts, written questions, lists, and other records relating to the test, including, statements signed by examinees advising them of rights under the CAA (as described in section 1.23(a)(3) of this part) and any electronic recordings of examinations, for at least three years from the date of the administration of the test. (See section 1.30 of this part for recordkeeping requirements.)

SUBPART D—RECORDKEEPING AND DISCLOSURE REQUIREMENTS

Sec. 1.30 Records to be preserved for 3 years

(a) The following records shall be kept for a minimum period of three years from the date the polygraph examination is conducted (or from the date the examination is requested if no examination is conducted):

(1) Each employing office that requests an employee to submit to a polygraph examination in connection with an ongoing investigation involving economic loss or injury shall retain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular covered employee, as required by section 7(d)(4) of the EPPA and described in 1.12(a)(4) of this part.

(2) Each examiner retained to administer examinations pursuant to any of the exemptions under section 7(d), (e) or (f) of the EPPA (described in sections 1.12, 1.13, and 1.14 of this part) shall maintain all opinions, reports, charts, written questions, lists, and other records relating to polygraph tests of such persons.

Sec. 1.35 Disclosure of test information

This section prohibits the unauthorized disclosure of any information obtained during a polygraph test by any person, other than the examinee, directly or indirectly, except as follows:

(a) A polygraph examiner or an employing office (other than an employing office exempt under section 7 (a), (b), or (c) of the EPPA (described in Secs. 1.10 and 1.11 of this part)) may disclose information acquired from a polygraph test only to:

(1) The examinee or an individual specifically designated in writing by the examinee to receive such information;

(2) The employing office that requested the polygraph test pursuant to the provisions of the EPPA (including management personnel of the employing office where the disclosure is relevant to the carrying out of their job responsibilities);

(3) Any court, governmental agency, arbitrator, or mediator pursuant to an order from a court of competent jurisdiction requiring the production of such information;

(b) An employing office may disclose information from the polygraph test at any time to an appropriate governmental agency without the need of a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

(c) A polygraph examiner may disclose test charts, without identifying information (but not other examination materials and records), to another examiner(s) for examination and analysis, provided that such disclosure is for the sole purpose of consultation and review of the initial examiner's opinion concerning the indications of truthfulness or deception. Such action would not constitute disclosure under this part provided that the other examiner has no direct or indirect interest in the matter.

APPENDIX A TO PART 801—NOTICE TO EXAMINEE

Section 204 of the Congressional Accountability Act, which extends the rights and protections of section 8(b) of the Employee Polygraph Protection Act, and the regulations of the Board of Directors of the Office of Compliance (Sections 1.22, 1.23, 1.24, and 1.25), require that you be given the following information before taking a polygraph examination:

1. (a) The polygraph examination area [does] [does not] contain a two-way mirror, a camera, or other device through which you may be observed.

(b) Another device, such as those used in conversation or recording, [will] [will not] be used during the examination.

(c) Both you and the employing office have the right, with the other's knowledge, to record electronically the entire examination.

2. (a) You have the right to terminate the test at any time.

(b) You have the right, and will be given the opportunity, to review all questions to be asked during the test.

(c) You may not be asked questions in a manner which degrades, or needlessly intrudes.

(d) You may not be asked any questions concerning: Religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual preference or behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

(e) The test may not be conducted if there is sufficient written evidence by a physician that you are suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination.

(f) You have the right to consult with legal counsel or other representative before each phase of the test, although the legal counsel or other representative may be excluded from the room where the test is administered during the actual testing phase.

3. (a) The test is not and cannot be required as a condition of employment.

(b) The employer may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against you based on the analysis of a polygraph test, or based on your refusal to take such a test without additional evidence which would support such action.

(c)(1) In connection with an ongoing investigation, the additional evidence required for an employing office to take adverse action against you, including termination, may be (A) evidence that you had access to the property that is the subject of the investigation, together with (B) the evidence supporting the employing office's reasonable suspicion that you were involved in the incident or activity under investigation.

(2) Any statement made by you before or during the test may serve as additional supporting evidence for an adverse employment action, as described in 3(b) above, and any admission of criminal conduct by you may be transmitted to an appropriate government law enforcement agency.

4. (a) Information acquired from a polygraph test may be disclosed by the examiner or by the employing office only:

(1) To you or any other person specifically designated in writing by you to receive such information;

(2) To the employing office that requested the test;

(3) To a court, governmental agency, arbitrator, or mediator that obtains a court order;

(b) Information acquired from a polygraph test may be disclosed by the employing office to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

5. If any of your rights or protections under the law are violated, you have the right to take action against the employing office by filing a request for counseling with the Office of Compliance under section 402 of the Congressional Accountability Act. Employing offices that violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees.

6. Your rights under the EPPA may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the EPPA, and agreed to and signed by the parties.

I acknowledge that I have received a copy of the above notice, and that it has been read to me. _____

(Date) _____

(Signature)

MESSAGES FROM THE PRESIDENT RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 4, 1995, the Secretary of the Senate on November 27, 1995, received a message from the President of the United States submitting sundry nominations, which were referred to the Committee on the Judiciary.

The nominations received on November 27, 1995, are shown in today's RECORD at the end of the Senate proceedings.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were offered to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE RAILROAD RETIREMENT BOARD FOR FISCAL YEAR 1994—MESSAGE FROM THE PRESIDENT—PM 97

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I transmit herewith the Annual Report of the Railroad Retirement Board for Fiscal Year 1994, pursuant to the provisions of section 7(b)(6) of the Railroad Retirement Act and section 12(1) of the Railroad Unemployment Insurance Act.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *November 28, 1995*.

REPORT ON THE NATIONAL EMERGENCY WITH IRAN—MESSAGE FROM THE PRESIDENT—PM 98

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I hereby report to the Congress on developments since the last Presidential report of May 18, 1995, concerning the national emergency with respect to Iran that was declared in Executive Order No. 12170 of November 14, 1979. This report is submitted pursuant to section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c) and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9(c). This report covers events through September 29, 1995. My last report, dated May 18, 1995, covered events through April 18, 1995.

1. On March 15 of this year by Executive Order No. 12957, I declared a separate national emergency pursuant to the International Emergency Economic Powers Act and imposed separate sanctions. Executive Order No. 12959, issued May 6, 1995, then significantly augmented those new sanctions. As a result, as I reported on September 18, 1995, in conjunction with the declaration of a separate emergency and the imposition of new sanctions, the Iranian Transactions Regulations, 31 CFR Part 560, have been comprehensively amended.

There have been no amendments to the Iranian Assets Control Regulations, 31 CFR Part 535, since the last report. However, the amendments to the Iranian Transactions Regulations that implement the new separate national emergency are of some relevance to the Iran-United States Claims Tribunal (the ''Tribunal'') and related activities. For example, sections 560.510, 560.513, and 560.525 contain general licenses with respect to, and provide for specific licensing of, certain transactions related to arbitral activities.

2. The Tribunal, established at The Hague pursuant to the Algiers Accords, continues to make progress in arbitrating the claims before it. Since my last report, the Tribunal has rendered four awards, bringing the total number to 566. As of September 29, 1995, the value of awards to successful American claimants from the Security Account held by the NV Settlement Bank stood at $2,368,274,541.67.

Iran has not replenished the Security Account established by the Accords to ensure payment of awards to successful U.S. claimants since October 8, 1992. The Account has remained continuously below the $500 million balance required by the Algiers Accords since November 5, 1992. As of September 29, 1995, the total amount in the Security Account was $188,105,627.95, and the total amount in the Interest Account was $32,066,870.62.

Therefore, the United States continues to pursue Case A/28, filed in September 1993, to require Iran to meet its obligations under the Accords to replenish the Security Account. Iran filed its Statement of Defense in that case on August 31, 1995. The United States is preparing a Reply for filing on December 4, 1995.

3. The Department of State continues to present other United States Government claims against Iran, in coordination with concerned government agencies, and to respond to claims brought against the United States by Iran, in coordination with concerned government agencies.

In September 1995, the Departments of Justice and State represented the United States in the first Tribunal hearing on a government-to-government claim in 5 years. The Full Tribunal heard arguments in Cases A/15(IV) and A/24. Case A/15(IV) is an interpretive dispute in which Iran claims that the United States has violated the Algiers Accords by its alleged failure to terminate all litigation against Iran in U.S. courts. Case A/24 involves a similar interpretive dispute in which, specifically, Iran claims that the obligation of the United States under the Accords to terminate litigation prohibits a lawsuit against Iran by the McKesson Corporation from proceeding in U.S. District Court for the District of Columbia. The McKesson Corporation reactivated that litigation against Iran in the United States following the Tribunal's negative ruling on Foremost McKesson Incorporated's claim before the Tribunal.

Also in September 1995, Iran filed briefs in two cases, to which the United States is now preparing responses. In Case A/11, Iran filed its Hearing Memorial and Evidence. In that case, Iran has sued the United States for $10 billion, alleging that the United States failed to fulfill its obligations under the Accords to assist Iran in recovering the assets of the former Shah of Iran. Iran alleges that the United States improperly failed to (1) freeze the U.S. assets of the Shah's estate and certain U.S. assets of close relatives of the Shah; (2) report to Iran all known information about such assets; and (3) otherwise assist Iran in such litigation.

In Case A/15(II:A), 3 years after the Tribunal's partial award in the case, Iran filed briefs and evidence relating to 10 of Iran's claims against the United States Government for nonmilitary property allegedly held by private companies in the United States. Although Iran's submission was made in response to a Tribunal order directing Iran to file its brief and evidence "concerning all remaining issues to be decided by this Case," Iran's filing failed to address many claims in the case.

In August 1995, the United States filed the second of two parts of its consolidated submission on the merits in Case B/61, addressing issues of liability and compensation. As reported in my May 1995 Report, Case B/61 involves a claim by Iran for compensation with respect to primarily military equipment that Iran alleges it did not receive. The equipment was purchased pursuant to commercial contracts with more than 50 private American companies. Iran alleges that it suffered direct losses and consequential damages in excess of $2 billion in total because the United States Government's refusal to allow the export of the equipment after January 19, 1981, in alleged contravention of the Algiers Accords.

4. Since my last report, the Tribunal has issued two important awards in favor of U.S. nationals considered dual United States-Iranian nationals by the Tribunal. On July 7, 1995, the Tribunal issued Award No. 565, awarding a claimant $1.1 million plus interest for Iran's expropriation of the claimant's shares in the Iranian architectural firm of Abdolaziz Farmafarmaian & Associates. On July 14, 1995, the Tribunal issued Award No. 566, awarding two claimants $129,869 each, plus interest, as compensation for Iran's taking real property inherited by the claimants from their father. Award No. 566 is significant in that it is the Tribunal's first decision awarding dual national claimants compensation for Iran's expropriation of real property in Iran.

5. The situation reviewed above continues to implicate important diplomatic, financial, and legal interests of the United States and its nationals and presents an unusual challenge to the national security and foreign policy of the United States. The Iranian Assets Control Regulations issued pursuant to Executive Order No. 12170 continue to play an important role in structuring our relationship with Iran and in enabling the United States to implement properly the Algiers Accords. I shall continue to exercise the powers at my disposal to deal with these problems and will continue to report periodically to the Congress on significant developments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *November 28, 1995*.

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 2:48 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2491. An act to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996.

The enrolled bill was signed subsequently by the President pro tempore (Mr. THURMOND).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1622. A communication from the Secretary of Agriculture, transmitting, a draft of proposed legislation to amend the Consolidated Farm and Rural Development Act and the Rural Development Act of 1972 to improve the effectiveness of certain rural development programs by providing limited authority to transfer appropriated funds among program accounts, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1623. A communication from the Director of Corporate Financial Audits, the General Accounting Office, transmitting, pursuant to law, a determination of the 1995 fiscal year interest rates on rural telephone bank loans; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1624. A communication from the Deputy Assistant Secretary of the Air Force (Communications, Computers, and Support Systems), transmitting, a cost comparison study of the Euro-NATO Joint Jet Pilot Training (ENJJPT) aircraft maintenance contract; to the Committee on Armed Services.

EC–1625. A communication from the Director of the Office of Management and Budget, the Executive Office of the President, transmitting, pursuant to law, the report on direct spending or receipts legislation within five days of enactment; to the Committee on the Budget.

EC–1626. A communication from the Secretary of Transportation, transmitting, pursuant to law, the annual report of Accomplishments Under the Air Improvement Program for fiscal year 1994; to the Committee on Commerce, Science, and Transportation.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–474. A concurrent resolution adopted by the Legislature of the State of Michigan; to the Committee on Foreign Relations.

"HOUSE CONCURRENT RESOLUTION NO. 54

"Whereas, the people of the Republic of China are among the most trusted friends of the American people. They have built a prosperous, successful, and free economy, and they are important trading partners of the American people. It is incumbent on the people of Michigan to foster this relationship, and no better way of doing so exists than in establishing a sister-state relationship between our two peoples; and

"Whereas, in a complex world it is very important to promote greater world understanding by learning more about the people of different nations. Such actions are mutually beneficial and encourage social, economic, educational, and cultural programs through which all nations are enriched and increased world understanding is created; and

"Whereas, the Republic of China is rich in agricultural products, textiles, electrical machinery, and plastic products. It is wealthy, too, in its people, as we are in Michigan. It would be in our own interest and in the interest of the Republic of China to foster a strengthening of our current knowledge of one another by creating a sister-state relationship between the Province of Taiwan of the Republic of China and the state of Michigan of the United States: Now, therefore be it

"*Resolved by the House of Representatives (the Senate concurring)*, That the Michigan Legislature hereby establishes a sister-state relationship with the Province of Taiwan of the Republic of China and the state of Michigan of the United States. We invite the people and government of the Republic of China to conduct mutually beneficial social, economic, educational, and cultural programs to bring our citizens closer together and to strengthen international understanding and goodwill; and be it further

"*Resolved*, That a copy of this resolution be transmitted to the President of the United

States Senate, the Speaker of the United States House of Representatives, each member of the Michigan delegation to the Congress of the United States, and executive and legislative officials of the Republic of China.''

POM–475. A petition from a citizen of the State of Texas relative to Congressional term limits; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, with amendments:

S. 1136. A bill to control and prevent commercial counterfeiting, and for other purposes (Rept. No. 104–177).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DORGAN:

S. 1427. A bill to improve the national crime database and create a Federal cause of action for early release of violent felons; to the Committee on the Judiciary.

By Ms. SNOWE (for herself, Mr. DOLE, Mrs. BOXER, Mr. THOMAS, Mr. WARNER, Mr. KEMPTHORNE, Mr. GRASSLEY, Mr. MCCAIN, Mr. COHEN, Mr. ABRAHAM, Mr. CHAFEE, Mr. JEFFORDS, Mr. PRESSLER, Mr. NICKLES, Mr. SIMPSON, Mr. SPECTER, Mrs. HUTCHISON, Mr. DOMENICI, Mr. DEWINE, Mrs. KASSEBAUM, Mr. BROWN, Mr. GREGG, Mr. COATS, Mr. HARKIN, Mr. BOND, Mr. COCHRAN, Mr. THURMOND, Mr. BAUCUS, Mr. SANTORUM, and Mr. SMITH):

S. 1428. A bill to provide for comparable treatment of federal employees and members of Congress and the President during current fiscal hiatus; to the Committee on Governmental Affairs.

By Mr. DOMENICI (for himself, Mr. LOTT, Mr. WARNER, Mr. STEVENS, Mr. COHEN, Mr. EXON, and Mr. PRESSLER):

S. 1429. A bill to provide clarification in the reimbursement to States for federally funded employees carrying out Federal programs during the lapse in appropriations between November 14, 1995, through November 19, 1995; to the Committee on Governmental Affairs.

By Mr. PRESSLER (for himself and Mr. DASCHLE):

S. 1430. A bill to authorize a land conveyance at the Radar Bomb Scoring Site, Belle Fourche, South Dakota; to the Committee on Armed Services.

By Mr. MCCAIN:

S. 1431. A bill to make certain technical corrections in laws relating to Native Americans, and for other purposes; to the Committee on Indian Affairs.

S. 1432. A bill to amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes; read the first time.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DORGAN:

S. 1427. A bill to improve the national crime database and create a Federal cause of action for early release of violent felons; to the Committee on the Judiciary.

THE VIOLENT CRIME INTERVENTION ACT OF 1995

Mr. DORGAN. Mr. President, I rise today to introduce legislation that will fill the void in the Federal response to the Nation's crime epidemic by putting violent offenders in jail and keeping them there.

Probably all of us have seen reference in the papers these days that crime is down. According to the statistics by the FBI, there is a slight decrease in crime in our country. That ought not give anyone great comfort, in my judgment, because the slight decrease comes from an extraordinarily high rate of crime in our country.

A violent crime occurs every 17 seconds in America; a rape occurs every 5 minutes; a robbery, every 51 seconds; a murder every 23 minutes.

We have a country that is, presumably, a civilized nation full of wonderful people—with 23,000 murders every year. So no one should take great solace in the fact that the FBI or someone else says the crime rate is down slightly. It is at an extraordinarily high level, and represents an epidemic of crime that we must deal with.

Crime no longer is limited to specific neighborhoods, cities, or States. It is a national epidemic, and the criminal justice system of each State often affects citizens of other states. My legislation, the Violent Crime Intervention Act of 1995, addresses two aspects of this problem that on which the Federal Government must show leadership.

First, the bill will make it a national priority to put into operation a complete, accurate, and up-to-date nationwide database of criminal records. Currently, the Federal Bureau of Investigation's interstate identification index—the triple-I—provides more than 75,000 criminal record checks every day, but the information it provides is incomplete and, therefore, unreliable. In fact, only 30 States currently participate in this system.

The bill will help to complete a national database of violent criminals. Last year's crime bill appropriated $100 million for fiscal year 1995 to help states establish or improve their criminal databases under the Brady law. It also authorized another $50 million for this same purpose for fiscal years 1996 and 1997. Under my legislation, every State must set up a criminal record database within 2 years that is connected to the Triple-I and that provides accurate information about that State's criminals.

States that do not comply with these provisions would not be shut off from using the Triple-I system. That could hurt law enforcement. However, they would have to pay a fee each time they use the system until they contribute their own complete and up-to-date records.

It does not take Dick Tracy to figure out who is going to commit the next murder, or the next violent crime. You can almost bet that the next violent crime in America committed in the next 45 seconds or so will be committed by someone who has committed violent crimes in the past. You can almost guarantee it. That is why it is critical for us to know who has committed previous crimes.

I will mention a personal story. My mother was a victim of a manslaughter incident some years ago. She was tragically killed in a circumstance in which those who were involved had criminal records. As I looked at those criminal records, I saw something curious. I saw that a judge with respect to one of the people involved had sentenced him to the State penitentiary once for a crime. He was picked up again when he was out on probation, was sent back to court—and the judge said, ''Well, OK. On the second offense you get probation.''

I called the judge. I said, ''Why would you give probation on a second offense?''

He said, ''Because I did not know the person committed the first offense.''

I said, ''You are kidding me. This defendant stands in front of you, a defendant who has been in State penitentiary, and you did not know that when you sentenced the defendant for the second offense?''

He said, ''I had no idea.''

Computer records even between jurisdictions in the same State were not then available to give the judge that basic information.

It does not make any sense what is going on. Michael Jordan's father was murdered allegedly by two people on a road in the Carolinas. Take a look at their records. The two people who allegedly killed Michael Jordan's father—both of them—had long criminal histories. And I will bet, if you access the triple-I, you will not find half of their criminal histories.

Second, my bill will provide a strong incentive for States to keep their violent criminals locked up for the criminal's full sentence. Last year's crime bill offered Federal crime-fighting funds to States that keep violent criminals locked up for at least 85 percent of their sentences. Surely we can do better than that.

Under my legislation, a State will be liable to victims of violent crimes committed by criminals the State released early from a sentence for a previous violent crime. A State could avoid liability only if the State required all violent criminals to serve their full sentences.

It occurred to me that we ought to do this because of a wonderful woman named Donna Martz who was murdered. She used to come to the Capitol steps and bring bus tours from North Dakota. I used to see her most every year and visit with her. She was murdered about 2 years ago by a couple of people who were convicted of violent crimes in Pennsylvania, and then they went to North Dakota, and abducted Donna Martz. The story is too violent

and awful even to retell. They took her through several States, and eventually brutally murdered her out in the desert of the West.

My point is this. Someone who is convicted in the State for a violent crime ought to serve their entire sentence. If a State decides for its own reasons that this violent criminal shall be let out before a sentence is ended, then I think that the State ought to be liable to the next victim or to the next victim's family. If that violent criminal is let out early and commits another violent act during the time when they should have been in a prison, make the State liable for its decision. That is the second part of my legislation. Clearly, the States will not like this.

States simply must keep known, violent offenders behind bars for their full sentence—or face the consequences of the State's decision to release these criminals. It is time for States to take responsibility for the horrible suffering and fear they can foster by prematurely releasing violent criminals.

These issues are of national concern and we can deal with them if the Federal and State governments make a concerted effort to keep violent offenders behind bars for their full sentences.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1427

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Violent Crime Intervention Act of 1995''.

TITLE I—NATIONAL CRIME RECORDS DATABASE

SEC. 101. FINDINGS.

The Congress finds that—

(1) nationwide—

(A) many State criminal record systems are not up to date and contain incomplete or incorrect information; and

(B) less than 20 percent of all criminal records are fully computerized, include court dispositions, and are accessible through the Interstate Identification Index of the Department of Justice; and

(2) a complete and accurate nationwide criminal record database is an essential element in fighting crime and development of such a database is a national priority.

SEC. 102. STATE CRIMINAL RECORD UPGRADES.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General of the United States shall issue guidelines establishing specific requirements for a State to qualify as a fully participating member of the Interstate Identification Index.

(b) MINIMUM REQUIREMENTS.—The guidelines referred to in subsection (a) shall require—

(1) that all arrest reports and final disposition orders are submitted to the State records repository within 7 days;

(2) the State repository to enter these records and orders into the State database not more than 24 hours after the repository receives the information;

(3) the State to conduct audits, at least annually, of State criminal records to ensure that such records contain correct and complete information about every felony arrest and report the results of each audit to the Attorney General of the United States;

(4) the State to certify to the Attorney General of the United States, on January 1 of each year, that the law enforcement agencies, courts, and records officials of the State are in compliance with this section; and

(5) such other conditions as the Attorney General determines are necessary.

(c) LIMITATIONS ON USE OF FILES.—The Attorney General may establish limitations on the purposes for which the Interstate Identification Index may be used and may allow a State to prohibit the use of information provided by the State for searches unrelated to law enforcement.

(d) FEES.—A State that does not qualify as a fully participating State, pursuant to the guidelines referred to in subsection (a), within 2 years after the date on which the Attorney General of the United States issues such guidelines shall pay a user fee for each identification request made to the Interstate Identification Index in an amount equal to the average cost of a single Federal database inquiry, as determined by the Attorney General each year.

TITLE II—LIABILITY FOR EARLY RELEASE OF VIOLENT FELONS

SEC. 201. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) violent criminals often serve only a small portion of their original sentences;

(2) a significant proportion of the most serious violent crimes committed in the United States are committed by criminals who have been released early from a sentence for a previous violent crime;

(3) violent criminals who are released early from prison often travel to other States to commit additional violent crimes;

(4) the crime and threat of crime committed by violent criminals released early from prison affects tourism, economic development, use of the interstate highway system, federally owned or supported facilities, and other commercial activities of individuals; and

(5) the policies of one State regarding the early release of criminals sentenced in that State for a violent crime often affect the citizens of other States, who can influence those policies only through Federal law.

(b) PURPOSE.—The purpose of this title is to reduce violent crime by requiring States to bear the responsibility for the consequences of releasing violent criminals before they serve the full term for which they were sentenced.

SEC. 202. CAUSE OF ACTION.

(a) IN GENERAL.—The victim (or in the case of a homicide, the family of the victim) of a violent crime shall have a Federal cause of action in any district court against a State if the individual committing the crime—

(1) had previously been convicted by the State of a violent offense;

(2) was released prior to serving his or her full sentence for such offense; and

(3) committed the violent crime before the original sentence would have expired.

(b) DEFINITION.—As used in this title, the term ''crime of violence'' has the same meaning as in section 16 of title 18, United States Code.

(c) DAMAGES.—A State shall be liable to the victim in an action brought under this title for the actual damages (direct and indirect) resulting from the violent crime, but not for punitive damages.

By Mr. DOMENICI (for himself, Mr. LOTT, Mr. STEVENS, Mr. COHEN, Mr. EXON, Mr. PRESSLER, and Mr. WARNER):

S. 1429. A bill to provide clarification in the reimbursement to States for federally funded employees carrying out Federal programs during the lapse in appropriations between November 14, 1995, through November 19, 1995, to the Committee on Governmental Affairs.

REIMBURSEMENT FOR FURLOUGHED FEDERAL EMPLOYEES DURING RECENT GOVERNMENT SHUTDOWN LEGISLATION

• Mr. DOMENICI. Mr. President, I introduce legislation relating to the recently enacted continuing appropriations resolution and concerns that have been raised regarding the payment of furloughed employees during the 6-day Government closure. I am joined in offering this legislation by my distinguished colleagues, Senators LOTT and Senator WARNER.

Mr. President, the furlough pay language that the Congress adopted as part of House Joint Resolution 122, the continuing resolution, is language that previous Congresses have adopted to provide compensation to Federal employees during periods of Government closure.

This language was enacted to provide compensation to Federal employees affected by Government closure in 1984, 1986, 1987, and 1990. This language was provided to Congress by the administration to meet our stated intent that Federal workers should not suffer a loss of pay as a result of the 6-day closure of the Federal Government.

It has now been brought to our attention that the language included in the continuing resolution may inadvertently not cover all employees who were subject to the furlough. The administration has indicated that there are State employees paid with 100 percent Federal funds who make disability determinations and administer unemployment insurance benefits, for example, that may not be covered by the language in the continuing resolution regarding the payment of compensation during the recent 6-day shutdown of the Federal Government.

I am therefore introducing legislation to clarify our intent that all furloughed Federal workers, including federally funded workers, affected by the shutdown of the Federal Government receive their pay as Congress intended. The legislation ensures that 100 percent federally-funded State employees affected by the furlough receive their pay, and that States using their own funds to make up for the lack of Federal funds for these employees are reimbursed to carry out 100 percent federally-supported functions.

Mr. President, it was and is clearly the intent of the Congress to pay Federal workers for the 6-day period of the Government shutdown. The language enacted in the continuing resolution has been used in previous years to successfully address this situation. I hope the language does so this year. If not, I urge my colleagues to adopt the bill I am introducing to clarify our intent on this matter.•

By Mr. PRESSLER (for himself, and Mr. DASCHLE):

S. 1430. A bill to authorize a land conveyance at the radar bomb-scoring site, Belle Fourche, SD; to the Committee on Armed Services.

LAND CONVEYANCE LEGISLATION

Mr. PRESSLER. Mr. President, I rise today to introduce legislation that would transfer Air Force radar bomb-scoring facilities near Belle Fourche, SD, to the local Belle Fourche School District. The Air Force has declared facilities located at Detachment 21 of the 554th Range Squadron as excess Federal property. The Air Force is expected to dispose of the excess bomb-scoring facilities in July 1996.

Mr. President, the transfer of excess Air Force facilities to the Belle Fourche School District would relieve overcrowded local public educational facilities in a school district with increasing enrollments. Currently, the Belle Fourche School District is one of the poorest school districts in South Dakota. A small tax base coupled with a proposed additional tax burden for the renovation of the old Roosevelt school building prompted local taxpayers to reject two bond issues that would have relieved the growing classroom crowding problem. The transfer of excess Air Force facilities to the Belle Fourche School District is a responsible, cost-effective approach to addressing an increasingly serious local problem. It is an example of two levels of government cooperating for a common good. The transfer of excess Air Force facilities would help provide a quality educational environment for many schoolchildren living in Belle Fourche.

Mr. President, I ask unanimous consent that resolutions of support for my legislation from State, county, city and local governments be included in the RECORD. I further ask unanimous consent the full text of the bill be printed in the RECORD. I urge my colleagues to adopt this important legislation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1430

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

SECTION 1. LAND CONVEYANCE, RADAR BOMB SCORING SITE, BELLE FOURCHE, SOUTH DAKOTA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey, without consideration, to the Belle Fourche School District, Belle Fourche, South Dakota (in this section referred to as the ''District''), all right, title, and interest of the United States in and to a parcel of real property, together with any improvements thereon, consisting of approximately 37 acres located in Belle Fourche, South Dakota, which has served as the location of a support complex and housing facilities for Detachment 21 of the 554th Range Squadron, an Air Force Radar Bomb Scoring Site located in Belle Fourche, South Dakota. The conveyance may not include any portion of the radar bomb scoring site located in the State of Wyoming.

(b) CONDITION OF CONVEYANCE.—The conveyance authorized under subsection (a) shall be subject to the condition that the District—

(1) use the property and facilities conveyed under that subsection for education, economic development, and housing purposes; or

(2) enter into an agreement with an appropriate public or private entity to sell or lease the property and facilities to such entity for such purposes.

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property conveyed under this section shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the District.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under this section as the Secretary considers appropriate to protect the interests of the United States.

STATE OF SOUTH DAKOTA,
November 15, 1995.

Mr. WADE PEHL,
Belle Fourche School District 9–1,
Belle Fourche, SD.

DEAR MR. PEHL: I am certainly pleased to lend my support to the proposed acquisition of the Air Force Detachment 21 site in Belle Fourche by the Belle Fourche School District. The potential for public good is remarkable. Not only will it address certain critical facility needs of the school district, it will provide badly needed moderate income housing for the Belle Fourche community. I am especially pleased with the cooperative spirit that has been evident in this project between the various local governments; it is this type of cooperation that will provide innovative solutions to many community challenges.

You and the entire board are to be commended for your creativity in this matter. Please be assured that you have my wholehearted support in this undertaking. If I may be of further assistance, please do not hesitate to contact my office.

Sincerely,

WILLIAM J. JANKLOW,
Governor.

BOARD OF BUTTE COUNTY COMMISSIONERS RESOLUTION OF SUPPORT

It Is Hereby Resolved by the Butte County Board of Commissioners that a majority of the Board supports a proposed U.S. Senate Bill to authorize a land conveyance at the Detachment 21 of the 554th Range Squadron, an Air Force Radar Bomb Scoring Site in Belle Fourche, South Dakota to the Belle Fourche School District, Belle Fourche, South Dakota.

Dated this 21st day of November 1995.

RESOLUTION

Whereas, it has come to the attention of the Common Council of the City of Belle Fourche, Butte County, South Dakota, of the proposed termination of the support complex and housing facilities for Detachment 21 of the 554th range Squadron, an Air Force Radar Bomb Scoring Site located in Belle Fourche; and

Whereas, the Belle Fourche School District No. 9–1, is in need of an additional site so as to provide adequate public education facilities for its citizens and patrons; and

Whereas, the Common council of the City recognizes the need to provide adequate facilities for education within the community and feels that the complex has great potential to enhance the program for learning within the City;

Now, therefore, be it *Resolved*, That the Common Council of the City of Belle Fourche does hereby support the transfer of ownership of the support complex and housing facilities for U. S. Air Force Detachment 21 located in Belle Fourche, South Dakota to the Belle Fourche School District No. 9–1.

Dated at Belle Fourche, this 20th day of November 1995.

BELLE FOURCHE SCHOOL DISTRICT BOARD OF EDUCATION RESOLUTION OF SUPPORT

It Is Hereby Resolved by the Belle Fourche School District 9–1 Board of Education that the Board fully supports the transfer of the United States Air Force property in Belle Fourche, South Dakota, to the Belle Fourche School District 9–1 as a ''public benefit transfer.'' Transfer of the support complex and housing facilities for Detachment 21 of the 554th Range Squadron for use by the Belle Fourche School District 9–1 would benefit Belle Fourche School District 9–1 and such a transfer has the full and unqualified support of the Belle Fourche School District 9–1 Board of Education.

Dated this 13th day of November 1995, at Belle Fourche, South Dakota.

By Mr. MCCAIN:

S. 1431. A bill to make certain technical corrections in laws relating to native Americans, and for other purposes; to the Committee on Indian Affairs.

TECHNICAL CORRECTIONS LEGISLATION

• Mr. MCCAIN. Mr. President, I am introducing today a bill to amend two existing laws that provide for the settlement of the water rights claims of two Indian tribes in Arizona.

Section 1 of the bill amends section 112 of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994 to extend by 6 months the time for the settlement parties to finish all actions required to complete the settlement. Under the original act, the Secretary of the Interior is required to publish in the Federal Register by December 31, 1995, a statement of findings that includes a finding that contracts for the assignment of Central Arizona Project water have been executed. Due to several unforeseen developments, the Department of the Interior, the Yavapai-Prescott Tribe, and the city of Prescott have concluded that additional time is necessary to finalize the agreements and publish the Secretary's findings in the Federal Register. Accordingly, the amendment extends the deadline for completion of the settlement to June 30, 1996.

Section 2 of the bill amends the San Carlos Apache Tribe Water Rights Settlement Act of 1992 to extend by 1 year the deadline for the settlement parties to complete all actions needed to effect the settlement, including finalizing agreements between the San Carlos Apache Tribe and the Phelps-Dodge Corp., and between the tribe and the town of Globe. This amendment would extend the deadline from December 31, 1995, to December 31, 1996. The Department of the Interior, the San Carlos Apache Tribe, and the other settlement parties all support this extension.

Mr. President, it is extremely important that the Congress pass these two time-sensitive provisions before the end of the year. The San Carlos Apache and Yavapai-Prescott settlements are

the product of years of painstaking negotiation and effort by many parties. No party, in particular the United States, would benefit from a lapse in the statutory authority for completing these settlements. Without the time extensions contained in this bill, the many fruits of these collective efforts could be lost.

On October 31, 1995, the Senate passed S. 325, a bill comprised of 22 sections containing amendments to various laws affecting native Americans. Sections 1 and 2 described in the preceding paragraphs are identical to sections 15 and 22 of S. 325. However, it now appears doubtful that the House will pass S. 325 by the end of the year. Consequently, I am introducing this bill today to ensure that the parties to the San Carlos and Yavapai-Prescott settlements will have sufficient time to complete the work needed to make those settlements final.●

ADDITIONAL COSPONSORS

S. 326

At the request of Mr. HATFIELD, the names of the Senator from Vermont [Mr. JEFFORDS] and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 326, a bill to prohibit United States military assistance and arms transfers to foreign governments that are undemocratic, do not adequately protect human rights, are engaged in acts of armed aggression, or are not fully participating in the United Nations Register of Conventional Arms.

S. 386

At the request of Mr. MCCONNELL, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 386, a bill to amend the Internal Revenue Code of 1986 to provide for the tax-free treatment of education savings accounts established through certain State programs, and for other purposes.

S. 771

At the request of Mr. PRYOR, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 771, a bill to provide that certain Federal property shall be made available to States for State use before being made available to other entities, and for other purposes.

S. 837

At the request of Mr. WARNER, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 837, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 250th anniversary of the birth of James Madison.

S. 881

At the request of Mr. PRYOR, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 881, a bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 978

At the request of Mrs. HUTCHISON, the names of the Senator from Arkansas [Mr. PRYOR], the Senator from Tennessee [Mr. FRIST], the Senator from Maryland [Ms. MIKULSKI], the Senator from Maine [Mr. COHEN], the Senator from North Carolina [Mr. HELMS], the Senator from Kentucky [Mr. FORD], the Senator from New York [Mr. D'AMATO], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of S. 978, a bill to facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws, to clarify the inapplicability of antitrust laws to charitable gift annuities, and for other purposes.

S. 1043

At the request of Mr. STEVENS, the names of the Senator from South Dakota [Mr. DASCHLE] and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 1043, a bill to amend the Earthquake Hazards Reduction Act of 1977 to provide for an expanded Federal program of hazard mitigation, relief, and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes.

S. 1271

At the request of Mr. CRAIG, the names of the Senator from South Dakota [Mr. PRESSLER] and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 1271, a bill to amend the Nuclear Waste Policy Act of 1982.

S. 1396

At the request of Mr. PRESSLER, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1396, a bill to amend title 49, United States Code, to provide for the regulation of surface transportation.

S. 1401

At the request of Mr. BENNETT, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 1401, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to minimize duplication in regulatory programs and to give States exclusive responsibility under approved States program for permitting and enforcement of the provisions of that Act with respect to surface coal mining and reclamation operations, and for other purposes.

S. 1409

At the request of Mr. D'AMATO, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 1409, a bill to amend section 255 of the National Housing Act to extend the mortgage insurance program for home equity conversion mortgages, and for other purposes.

S. 1414

At the request of Mrs. HUTCHISON, the names of the Senator from Wyoming [Mr. THOMAS] and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of S. 1414, a bill to ensure that payments during fiscal year 1996 of compensation for veterans with service-connected disabilities, of dependency and indemnity compensation for survivors of such veterans, and of other veterans benefits are made regardless of Government financial shortfalls.

AMENDMENTS SUBMITTED

THE INTERSTATE COMMERCE COMMISSION SUNSET ACT OF 1995

PRESSLER (AND EXON) AMENDMENT NO. 3063

Mr. PRESSLER (for himself and Mr. EXON) proposed an amendment to the bill (S. 1396) to amend title 49, United States Code, to provide for the regulation of surface transportation; as follows:

On page 256, between lines 4 and 5, insert the following:

(c) SEPARATED EMPLOYEES.—Notwithstanding all other laws and regulations, the Department of Transportation shall place all Interstate Commerce Commission employees separated from the Commission as a result of this Act on the DOT reemployment priority list (competitive service) or the priority employment list (excepted service).

On page 281, between lines 18 and 19, insert the following:

SEC. 217. TRANSPORT VEHICLES FOR OFF-ROAD, COMPETITION VEHICLES.

Section 31111(b)(1) is amended—

(1) by striking ''or'' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting a semicolon and ''or''; and

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

''(E) imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers used exclusively or primarily in connection with motorsports competition events.''.

On page 283, strike lines 9 through 11 and insert the following:

''(16) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under the provisions of this subtitle.''.

On page 284, between lines 18 and 19, insert the following:

(5) by striking ''or'' at the end of subsection (b)(1);

(6) by striking the period at the end of subsection (b)(2) and inserting a semicolon and ''or'';

(7) by adding at the end of subsection (b) the following:

''(3) transportation by a commuter authority, as defined in section 24102 of this title, except for sections 11103, 11104, and 11503.'';

On page 284, line 19, strike ''(5)'' and insert ''(8)''.

On page 284, line 24, strike ''(6)'' and insert ''(9)''.

On page 286, line 16, insert ''competitive'' after ''other''.

On page 288, line 22, insert ''full'' after ''a''.

On page 288, line 23, strike ''impractical.'' and insert ''too costly given the value of the case.''.

On page 298, line 14, insert ''competitive'' after ''other''.

On page 319, between lines 2 and 3, insert the following:

(4) striking ''transaction.'' at the end of the second sentence of subsection (c) and inserting ''transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated.'';

On page 319, line 3, strike ''(4)'' and insert ''(5)''.

On page 319, line 4, strike ''(5)'' and insert ''(6)''.

On page 319, line 7, strike ''(6)'' and insert ''(7)''.

On page 319, line 9, strike ''(7)'' and insert ''(8)''.

On page 339, line 20, strike ''and''.

On page 340, line 6, strike ''actions.'' and insert ''actions; and''.

On page 340, between lines 6 and 7, insert the following:

''(4) in regulating transportation by water carrier, to encourage and promote service and price competition in the non-contiguous domestic trade.

On page 346, line 21, insert ''arranging for,'' after ''including''.

On page 346, line 23, insert ''unpacking,'' after ''packing,''.

On page 356, line 10, before ''The'' insert ''(a) GENERAL RULES.—''.

On page 357, between lines 21 and 22, insert the following:

''(b) DEFINITIONS.—In this section, the terms 'State' and 'United States' include the territories, commonwealths, and possessions of the United States.

On page 360, between lines 10 and 11, insert the following:

''(f) The Secretary or Transportation Board, as applicable, is prohibited from regulating or exercising jurisdiction over the transportation by water carrier in the non-contiguous domestic trade of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission or Interstate Commerce Commission under federal law in effect on November 1, 1995.

''(g) The Secretary or Transportation Board, as applicable, may not exempt a water carrier from the application of, or compliance with, sections 13801 and 13702 for transportation in the non-contiguous domestic trade.

On page 361, between lines 9 and 10, insert the following:

''(c) A complaint that a rate, classification, rule or practice in the non-contiguous domestic trade violates subsection (a) of this section may be filed with the Transportation Board.

''(d)(1) For purposes of this section, a rate or division of a carrier for service in non-contiguous domestic trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 7.5 percent above, or more than 10 percent below, the rate or division in effect 1 year before the effective date of the proposed rate or division.

''(2) The percentage specified in paragraph (1) shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the most recent 1-year period before the date the rate or division in question first took effect.

''(3) The Transportation Board shall determine whether any rate or division of a carrier or service in the non-contiguous domestic trade which is not within the range described in paragraph (1) is reasonable if a complaint is filed under subsection (c) of this section or section 13702(f)(5).

''(4) The Transportation Board, upon a finding of violation of subsection (a) or this section, shall award reparations to the complaining shipper or shippers in an amount equal to all sums assessed and collected that exceed the determined reasonable rate, division, rate structure or tariff. The Transportation Board, upon complaint from any governmental agency or authority, shall, upon a finding or violation of subsection (a) of this section, make such orders as are just and shall require the carrier to return, to the extent practicable, to shippers all sums, plus interest, which the Board finds to have been assessed and collected in violation of such subsections.

''(e) Any proceeding with respect to any tariff, rate charge, classification, rule, regulation or service that was pending before the Federal Maritime Commission shall continue to be heard until completion of issuance of a final order thereon under all applicable laws in effect as of that date.

On page 360, line 22, insert '', or a rate for a movement by a water carrier,'' after ''carrier''.

On page 408, line 7, strike ''13102(9)(A),'' and insert ''13102(9)(A)(i),''.

On page 485, between lines 7 and 8, insert the following:

SEC. 525. FIBER DRUM PACKAGING.

(a) IN GENERAL.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of enactment of this Act authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials if—

(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act as such Act was in effect before October 1, 1991;

(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation; and

(3) the packaging will not be used in the transportation of hazardous materials from a point in the United States to a point outside the United States, or from a point outside the United States to a point inside the United States.

(b) HAZARDOUS MATERIALS TRANSPORTATION AUTHORIZATION ACT OF 1994.—Section 122 of the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. 5101 note) is repealed.

SEC. 526. TERMINATION OF CERTAIN MARITIME AUTHORITY.

(a) REPEAL OF INTERCOASTAL SHIPPING ACT, 1933.—The Act of March 3, 1933 (Chapter 199; 46 U.S.C. App. 843 et seq.), commonly referred to as the Intercoastal Shipping Act, 1933, is repealed effective September 30, 1996.

(b) REPEAL OF PROVISIONS OF SHIPPING ACT, 1916.—The following provisions of the Shipping Act, 1916, are repealed effective September 30, 1996:

(1) Section 3 (46 U.S.C. App. 804).
(2) Section 14 (46 U.S.C. App. 812).
(3) Section 15 (46 U.S.C. App. 814).
(4) Section 16 (46 U.S.C. App. 815).
(5) Section 17 (46 U.S.C. App. 816).
(6) Section 18 (46 U.S.C. App. 817).
(7) Section 19 (46 U.S.C. App. 818).
(8) Section 20 (46 U.S.C. App. 819).
(9) Section 21 (46 U.S.C. App. 820).
(10) Section 22 (46 U.S.C. App. 821).
(11) Section 23 (46 U.S.C. App. 822).
(12) Section 24 (46 U.S.C. App. 823).
(13) Section 25 (46 U.S.C. App. 824).
(14) Section 27 (46 U.S.C. App. 826).
(15) Section 29 (46 U.S.C. App. 828).
(16) Section 30 (46 U.S.C. App. 829).
(17) Section 31 (46 U.S.C. App. 830).
(18) Section 32 (46 U.S.C. App. 831).
(19) Section 33 (46 U.S.C. App. 832).
(20) Section 35 (46 U.S.C. App. 833a).
(21) Section 43 (46 U.S.C. App. 841a).
(22) Section 45 (46 U.S.C. App. 841c).

SEC. 527. CERTAIN COMMERCIAL SPACE LAUNCH ACTIVITIES.

The licensing of a launch vehicle or launch site operator (including any amendment, extension, or removal of the license) under chapter 701 of title 49, United States Code, shall not be considered a major Federal action forpurposes of section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if—

(1) the Department of the Army has issued a permit for the activity; and

(2) the Army Corps of Engineers has found that the activity has no significant impact.

SEC. 528. USE OF HIGHWAY FUNDS FOR AMTRAK-RELATED PROJECTS AND ACTIVITIES.

Notwithstanding any other provision of law, the State of Vermont may use any unobligated funds apportioned to the State under section 104 of title 23, United States Code, to fund projects and activities related to the provision of rail passenger service on Amtrak within that State.

SEC. 529. VIOLATION OF GRADE-CROSSING LAWS AND REGULATIONS.

(a) FEDERAL REGULATIONS.—Section 31310 is amended by adding at the end thereof the following:

''(h) GRADE-CROSSING VIOLATIONS.—

''(1) SANCTIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

''(2) MINIMUM REQUIREMENTS.—The regulations issued under paragraph (1) shall, at a minimum, require that—

''(A) the penalty for a single violation is not less than a 60-day disqualification of the driver's commercial driver's license; and

''(B) any employer that knowingly allows, permits, authorized, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than $10,000.''.

(b) DEADLINE.—The initial regulations required under section 31310(h) of title 49, United States Code, shall be issued not later than one year after the date of enactment of this Act.

(c) STATE REGULATIONS.—Section 31311(a) is amended by adding at the end thereof the following:

''(18) The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(h) of this title.''.

Amend the table of sections by inserting the following after the item relating to section 216 of the bill:

Sec. 217. Transport vehicles for off-road, competition vehicles .....

Amend the table of sections by inserting the following after the item relating to section 524 of the bill:

Sec. 525. Fiber drum packaging .....
Sec. 526. Termination of certain maritime authority .....
Sec. 527. Certain commercial space launch activities .....
Sec. 528. Use of highway funds for Amtrak-related projects and activities .....
Sec. 529. Violation of grade-crossing laws and regulations. .....

DORGAN (AND BOND) AMENDMENT NO. 3064

Mr. DORGAN (for himself and Mr. BOND) proposed an amendment to the bill S. 1396, supra; as follows:

On page 319, strike lines 1 through 9 and insert in lieu thereof the following—

(3) striking subparagraph (E) of subsection (b)(1) and inserting in lieu thereof the following—

''(E) whether the proposed transaction will not substantially lessen competition, or tend to create a monopoly in any line of commerce in any section of the country.'';

(4) striking paragraph (2) of subsection (b) and striking ''(1)'' in the first paragraph of subsection (b);

(5) striking subsection (c) and inserting in lieu thereof the following—

''(c) The Commission shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. In making the findings under subsection (b)(1)(E), the Transportation Board—

''(1) shall request an analysis by the Attorney General of the United States and shall accord substantial deference to the recommendations of the Attorney General and shall approve the transaction only if it finds that transaction does not violate the standards set forth in subsection (b)(1)(E). The transaction may not be consummated before the thirtieth calendar day after the date of approval by the Transportation Board. Action under the antitrust laws arising out of the merger transaction may be brought only by the Attorney General, and any action brought shall be commenced prior to the earliest time under this subsection at which a merger transaction approved under this subsection may be consummated. The commencement of such an action shall stay the effectiveness of the Transportation Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. Upon consummation of a merger transaction in compliance with this subsection and after termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, but nothing in this subsection shall exempt any rail carrier resulting from a merger transaction approved under this subsection from complying with the antitrust laws after the consummation of such transaction:

''(2) may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights. Any trackage rights conditions imposed to alleviate anticompetitive effects of the transaction shall provide for compensation levels to ensure that such effects are alleviated;

''(3) may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest, when the transaction contemplates a guaranty or assumption of payment dividends or of fixed charges or will result in an increase of total fixed charges; and

''(4) may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Transportation Board finds their inclusion to be consistent with the public interest.'';

(6) striking the last two sentences of subsection (d);

(7) striking subsection (e); and

(8) notwithstanding any other provision of this Act, amendments under this section shall apply to all applications pending before the Transportation Board.

BOXER (AND OTHERS) AMENDMENT NO. 3065

Mrs. BOXER (for herself, Mr. HARKIN, Mr. BRYAN, Mr. BUMPERS, and Mr. FEINGOLD) proposed an amendment to the bill S. 1396, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . PAY OF MEMBERS OF CONGRESS AND THE PRESIDENT DURING GOVERNMENT SHUTDOWNS.

(a) COMPARABLE PAY TREATMENT.—The pay of Members of Congress and the President shall be treated in the same manner and to the same extent as the pay of the most adversely affected Federal employees who are not compensated for any period in which appropriations lapse.

(b) This section shall take effect December 15, 1995.

BYRD AMENDMENT NO. 3066

Mr. BYRD proposed an amendment to the bill S. 1396, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . DESTRUCTION OF MOTOR VEHICLES OR MOTOR VEHICLE FACILITIES; WRECKING TRAINS.

(a) DESTRUCTION OF MOTOR VEHICLES OR MOTOR VEHICLE FACILITIES.—Section 33 of title 18, United States Code, is amended by adding at the end the following new undesignated paragraph:

''Whoever is convicted of a crime under this section involving a motor vehicle that, at the time the crime occurred, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)), or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)), shall be imprisoned for not less than 30 years.''.

(b) WRECKING TRAINS.—Section 1992 of title 18, United States Code, is amended—

(10 by inserting after the fourth undesignated paragraph the following:

''Whoever is convicted of any such crime that involved a train that, at the time the crime occurred, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)), or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)), shall be imprisoned for not less than 30 years.''

ASHCROFT AMENDMENT NO. 3067

Mr. ASHCROFT proposed an amendment to the bill S. 1396, supra; as follows:

On page 413, after line 14, insert the following new subsection:

''(d) The remedies provided in this part, concerning matters covered by this part with respect to the transportation of household goods by motor carriers are exclusive and preempt the remedies provided under Federal or State law.''

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 10:15 a.m. on Tuesday, November 28, 1995, in open session, to receive testimony on the use of United States military forces to enforce the Bosnian peace agreement and the role of NATO and other foreign nations in the implementation force.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, November 28, 1995, at 2 p.m. to hold a closed hearing regarding intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

SENATE JOINT RESOLUTION 29

• Mr. SIMON. Mr. President, in going through the CONGRESSIONAL RECORDS I came across Senator FRANK MURKOWSKI's comments on Senate Joint Resolution 29.

In that resolution, he calls for dialog between North and South Korea.

Almost a year ago, Senator MURKOWSKI and I visited North Korea and South Korea, and I applaud what he suggests in this resolution and his leadership on it.

Let me add that I believe the United States could be a facilitator of this dialog.

Senator MURKOWSKI and I sent a letter suggesting that North Korea send 10 parliamentarians to the United States and South Korea the same, and that after visiting the United States for about 8 days, that the parliamentarians of both countries meet the last 2 days in an isolated setting with a few of us who would be hosts from the United States.

Because of the tensions that have arisen since the death of Kim Il Sung neither side was willing to take that step.

It is time to explore this again.

Nowhere in the world do you have as many troops facing each other, heavily armed, with a total lack of communication between the two sides.

The potential for explosion is very real and there are 140,000 American troops on the South Korean side.

We would have an interest in resolving this even without the presence of those troops but that adds a meaningful dimension to this.

I am sending a copy of these remarks to the Assistant Secretary of State for Asia, Winston Lord.

I ask that the text of the resolution be printed in the RECORD.

The text of the resolution follows:

S.J. RES. 29

Whereas the Agreed Framework Between the United States and the Democratic People's Republic of Korea of October 21, 1994, states in Article III, paragraph (2), that

''[t]he DPRK will consistently take steps to implement the North-South Joint Declaration on the Denuclearization of the Korean Peninsula'';

Whereas the Agreed Framework also states the ''[t]he DPRK will engage in North-South dialogue, as this Agreed Framework will help create an atmoshphere that promotes such dialogue'';

Whereas the two agreements entered into between North and South Korea in 1992, namely the North-South Denuclearization Agreement and the Agreement on Reconciliation, Nonaggression and Exchanges and Cooperation, provide an existing and detailed framework for dialogue between North and South Korea;

Whereas the North Korean nuclear program is just one of the lingering threats to peace on the Korean Peninsula; and

Whereas the reduction of tensions between North and South Korea directly serve United States interests, given the substantial defense commitment of the United States to South Korea and the presence on the Korean Peninsula of United States troops: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STEPS TOWARD NORTH-SOUTH DIALOGUE ON THE KOREAN PENINSULA.

It is the sense of the Congress that—

(1) substantive dialogue between North and South Korea is vital to the implementation of the Agreed Framework Between the United States and North Korea, dated October 21, 1994; and

(2) together with South Korea and other concerned allies, and in keeping with the spirit and letter of the 1992 agreements between North and South Korea, the President should pursue measures to reduce tensions between North and South Korea and should facilitate progress toward—

(A) holding a North Korea-South Korea summit;

(B) initiating mutual nuclear facility inspections by North and South Korea;

(C) establishing liaison offices in both North and South Korea;

(D) resuming a North-South joint military discussion regarding steps to reduce tensions between North and South Korea;

(E) expanding trade relations between North and South Korea;

(F) promoting freedom to travel between North and South Korea by citizens of both North and South Korea;

(G) cooperating in science and technology, education, the arts, health, sports, the environment, publishing, journalism, and other fields of mutual interest;

(H) establishing postal and telecommunications services between North and South Korea; and

(I) reconnecting railroads and roadways between North and South Korea.

SEC. 2. REPORT TO CONGRESS.

Beginning 3 months after the date of enactment of this joint resolution, and every 6 months thereafter, the President shall transmit to the appropriate congressional committees a report setting forth the progress made in carrying out section 1.

SEC. 3. DEFINITIONS.

As used in this joint resolution—

(1) the term ''appropriate congressional committees'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives;

(2) the term ''North Korea'' means the Democratic People's Republic of Korea; and

(3) the term ''South Korea'' means the Republic of Korea.●

TRIBUTE TO GILFORD HIGH SOCCER

● Mr. SMITH. Mr. President, true dynasties in sports are hard to come by these days. I am pleased to report, however, that a group of high school athletes and coaches in my State have achieved a special kind of success.

The Gilford Middle High School Golden Eagles varsity soccer team won their national record-setting ninth straight State championship on November 6. Senior All-American striker Kris Keenan finished off a brilliant high-school career with the game's only goal. Keenan's goal 10:06 into sudden-death overtime came at the expense of the Coe-Brown Northwood Academy Comanches. The loss was the first of the season for the Comanches, who had a tremendous season in their own right.

Winning the championship game extended Gilford's undefeated streak to 100 consecutive games. The team's last loss occurred almost six full seasons ago. With four more wins at the start of the 1996 campaign, the Golden Eagles will hold this national mark, as well.

The one constant throughout this amazing string of success has been head coach David Pinkham. Coach Pinkham came to Gilford in 1977, fresh off of his career as an All-American soccer player at Plymouth State College in Plymouth, NH.

In 19 seasons, Coach Pinkham has compiled a career record of 281–28–13. That is good for a .893 career winning percentage. Under his tutelage, the Golden Eagles have gone undefeated the past five seasons, and in seven of the past nine. Gilford's record since the beginning of its first championship season in 1987 is an incredible 152–2–7—.966.

Over the duration of his coaching career, Coach Pinkham's teams have scored almost seven and a half goals for every one of their opponents. Before a scoreless tie earlier this year, his teams had not been shut out for 121 consecutive games. This too, may be a national record.

Gilford has made the playoffs 17 consecutive years and has advanced to at least the Class M State semifinals for 15 straight seasons. Amazingly, the last time it failed to make it to the final four—1980—some members of this year's team had not yet been born.

The Golden Eagles have earned the respect of their opponents and followers of New Hampshire high school soccer not only for their athletic accomplishments, but also for the way they conduct themselves on the field. Gilford's players work extremely hard for their success and play the game with a tremendous amount of pride and class. At the same time, they show a great deal of respect for their opponents and the game they love.

These attributes that produce so many on-field accomplishments are evident in the rest of the players daily lives, as well. The Gilford community is rightfully proud of the dozens of fine young men produced by the Gilford soccer program.

Congratulations to Coach Dave Pinkham and the 1995 Class M State Soccer Champion Gilford Golden Eagles. On behalf of the citizens of the State of New Hampshire, I commend your outstanding accomplishment.●

THE DEATH OF HENRY J. KNOTT, SR.

● Ms. MIKULSKI. Mr. President, with great sadness, I rise today to pay tribute to an extraordinary man. Henry J. Knott, Sr., died yesterday at the age of 89. For many decades, we knew him in Baltimore and throughout Maryland as a talented businessman and a philanthropist whose generosity knew no bounds.

I first want to express my deepest condolences to his wife of 67 years, Marion Burk Knott, his 12 children, his 51 grandchildren, and his 55 great-grandchildren.

People in positions of power and responsibility should serve as role models for our young people and give something back to their communities. I have great admiration for people who have a sense of civic responsibility, for people who try to make their community a better place to live.

Mr. Knott epitomized these qualities. Throughout his career, he sought to help those less fortunate than himself get a better education and lead better lives. He donated millions of dollars to Catholic educational institutions like his alma mater, Loyola College; Mount St. Mary's College, Emmitsburg; the College of Notre Dame in Maryland; and the University of Notre Dame in Indiana. He was especially generous to the Institute of Notre Dame, a catholic high school both his daughters and I attended.

His legendary generosity extended well beyond education. He provided enormous help to health and cultural institutions as well. He donated essential funds to the Baltimore Symphony Orchestra, the Johns Hopkins Oncology Center, and several Baltimore hospitals to help them establish an income fund to provide medical care for the poor.

His many business activities earned him a reputation as a highly disciplined and hard-working person. But his civic and charitable activities showed us that he was also an extremely modest person who had very deep feelings for the Catholic Church, his community, and the people around him.

In a 1987 Baltimore magazine article, he was asked about his prodigious philanthropy. He replied that making money was ''like catching fish. You get up early. You fill the boat up with fish. And then you give them all away before they start to rot.'' This quote says a great deal about Henry Knott. He saw his wealth as a way to make life better for others. He never lost sight of this goal.

I mourn Henry Knott's death along with his family and the rest of Maryland. We will miss him greatly. However, I am very grateful that he was with us for 89 years, and I rejoice that he left Maryland and our Nation a better place than he found it.●

TRIBUTE TO PATRICIA WILBUR

● Mr. HATFIELD. Mr. President, it is unfortunately true that all good things must come to an end. On November 30, 1995, one of the best members of my staff will retire. Patricia Wilbur joined the staff on October 7, 1973, and will soon be joining her husband Perry in a long-deserved respite from the clamor of Capitol Hill.

Pat's career is a virtual survey of the technological revolution's impact on the Senate. As my office's systems administrator, Pat has witnessed the transition from typewriters and mimeograph machines, rotary phones and telegrams, to the world of faxes, pagers, cellular phones and computers. Pat has overseen this transformation with grace and humor as well as consummate professionalism.

The contribution of a good staffer often goes beyond their technical ability. This is a especially true with Pat. Fondly known as Mrs. Wilbur to several generations of staffers, Pat has helped shaped the lives of young Oregonians who wish to serve in the U.S. service academies and helped us all to be more efficient in our jobs. Pat has added to our hearts with her generosity and expressions of concern and added to our waistlines with her delicious home-baked cakes.

During her 22 years in our office, Pat has been a laudable embodiment of hard work, dedication and loyalty. She and I have grayed together—she far more gracefully than I. Pat has many good reasons for retiring, but three—her grandchildren Stephanie, Michael, and Julie—are the best. We will miss her institutional memory, her compassion and love as well as her competence but have nothing good wishes as she ends her Senate career.

I am deeply grateful for Pat Wilbur's many years of invaluable assistance and ask my colleagues to join me in offering our thanks for her service to the U.S. Senate.●

TWO SIDES AGREE ON OPPOSING GAMBLING

● Mr. SIMON. Mr. President, Father Robert Drinan, former Member of the House, had a column in the National Catholic Reporter recently that is of interest.

It points out where Catholics and Christian Coalition people can work together, and it is an area where liberals and conservatives can work together.

That is the growing problem of gambling.

I ask that the Robert Drinan column be printed in the RECORD.

The column follows:

TWO SIDES AGREE ON OPPOSING GAMBLING

(By Robert F. Drinan)

I was happy to discover recently that I agree with the Christian Coalition on at least one issue: opposition to gambling. Ralph Reed, the coalition's executive director (and a Presbyterian who looks like an altar boy) says that his organization may help finance an antigambling office in Washington. Reed asserts that his organization is ''pounding away'' at casinos and lotteries.

A conservative Colorado group named Focus on the Family is also pushing an antigambling agenda. Gambling foes are planning their first national convention in Florida. Keynote speaker is Congressman Frank Wolf, a conservative Republican from Virginia who is working aggressively against government-sponsored gambling.

It is far from clear that any coalition of antigambling groups can reverse the explosive growth of this form of entertainment. Lotteries, casinos, riverboat gambling and an ever-widening array of slot machines and other devices took in $482 billion last year.

Substantial sums from that take have gone to Republicans, including leading presidential candidates. Sen. Robert Dole took in $477,450 from gambling interests in Las Vegas, Nev. Sen. Phil Gramm of Texas has also benefited.

A further sign of entanglement: The former chairman of the Republican National Committee, Frank Fahrenkopf, is now the head of the American Gambling Association, the industry's trade group.

Daily and vehemently, the new Republican majority in the Congress proclaims agreement with the Christian Coalition on abortion, school prayer and welfare. But when it comes to gambling, the GOP is trapped between its devotion to the Christian Coalition and its desire for campaign contributions from the gambling industry.

Will the Christian Coalition use its newfound power in Congress and some Southern states to reinstate laws against gambling—laws that religious groups, Protestant and Catholic alike, fought to get on the books a century ago?

A clash before next year's presidential election is unlikely. Recognizing that the crusade against gambling is all but a lost cause, even the most ardent adherents of the Christian Coalition's agenda are not about to expend political capital telling state lawmakers to abolish gambling and tax their people fairly.

A further complication is that most Americans have never really focused on gambling's evils. It appeared on the American scene as a phenomenon that is odorless, invisible and inaudible. Hardly anyone is angry or indignant.

Still, the potential for scandal and corruption in the exploding gambling industry is so vast that almost anything could happen.

The protests of the Christian Coalition against gambling should be welcomed by all citizens and persons of faith. The desire to get something for nothing and the fantasy that we can be millionaires overnight are arguably the product of a sinful heart.

Count of Catholics, Mr. Reed, for support. On this issue, Catholics and the Christian Coalition are reading out of the same prayer book.●

NURSING HOME QUALITY AND THE BOREN AMENDMENT

● Mr. DORGAN. Mr. President, there has been considerable discussion on the Senate floor about the proposed changes to Federal nursing home quality standards.

In addition to making major cuts in projected Medicaid spending, early versions of the 7-year budget plan would have repealed entirely the nursing home standards adopted in 1987 as part of the Medicaid law. The final House-Senate compromise bill recently adopted by the Congress did not go that far, but it would weaken or eliminate several of these standards and would allow States to get waivers from the remaining Federal requirements.

Several of my colleagues have come to the floor to remind the Senate of the conditions in some nursing homes which led to the adoption of these standards in the first place.

Now I do not believe that all or even most nursing homes drugged or restrained their residents unnecessarily before the quality standards were put in place. Nursing homes in my State have a strong record of providing quality care.

But it is undeniable that some nursing homes did engage in these practices. And it is also undeniable that some states were too slow in putting an end to this kind of abuse. Therefore, I continue to believe that there should be minimum Federal quality standards, especially since the majority of Medicaid funding for nursing homes comes from the Federal Government.

However, one critical point which has not received as much attention in this debate is the ability of nursing homes to maintain the quality of their care—Federal standards or not—in the face of significant reductions in Medicaid reimbursement. As we all know, the budget plan would reduce by $163 billion future Federal funding for Medicaid. But that is not all.

A little noticed provision of this plan to turn the Medicaid Program into a block grant to the States is the repeal of the Boren amendment. The Boren amendment currently requires States to provide reimbursement to hospitals and nursing homes which is reasonable and adequate to cover their costs. This has provided critical protection from state attempts to cut Medicaid reimbursement below levels necessary to deliver quality care.

My fear is that repealing this protection is part of a deal with the States so that they will accept significantly reduced Federal funding for Medicaid. The budget proposal tells States to make due with less funding, but it allows them to, in effect, shift that funding shortfall onto nursing homes and hospitals. Well it may make the numbers add up, but what will it do to the care these institutions are able to provide to their patients?

So as we continue to debate the various changes which have been proposed to the Medicaid Program, let us not forget that Federal quality standards are not the only part of the Medicaid Program that impact quality of care. The $163 billion in cuts, combined with the repeal of the Boren amendment are also a great threat to the quality of

care received by Medicaid beneficiaries. I believe the Boren amendment must be preserved in any final compromise on the budget, and I intend to fight to see that it is.●

TRIBUTE TO ISRAEL COHEN

● Ms. MIKULSKI. Mr. President, I rise today to pay tribute to a great man and a great friend. Late last Wednesday, Israel Cohen, the chairman of Giant Food, passed away at 83.

Mr. Cohen came to this country as a young boy and learned the grocery business in his father's store on Georgia Avenue—one of the first self-service stores of its kind in the country. From this beginning, Mr. Cohen built the Giant Food & Drug empire. In a rapidly changing retail food market, Mr. Cohen survived and prospered through innovation. He experimented with selling items under private labels to cut costs and his stores were the first in the country to use scanners at the checkout counters.

Mr. Cohen was more than simply a successful businessman. He knew that the success of his business was directly related to the health and well-being of his employees. He was a man who always had time to visit with his employees, no matter how busy he may have been. He created a family atmosphere with his employees, refusing to be called Mr. Cohen, but insisting on Izzy. And he worked as hard for them as they did for him. His employees tell of waiting around after putting in a full shift to meet and shake hands with him. Mr. Cohen recognized the value and importance of every single worker at his stores, from the President of the company to the high-schooler who bags groceries on Saturday afternoons.

Mr. Cohen was dedicated to providing the best service possible. Even if that meant he had to jump in behind a cash register and bag a customer's groceries himself. This is a lesson from which every American should learn.●

ON THE ADVISABILITY OF NOT DEFAULTING

● Mr. SIMON. Mr. President, we have had a variety of sources telling us that the Nation should not default on its obligations because of the debt limit.

It should hardly be necessary to stress that. If we create debt, we have to pay for it. For that reason I have consistently—with one exception—voted for extending the debt limit whether it was a Democratic President or a Republican President. The real choice is when we create the debt. Once it is created we have to face up to it.

But a publication which probably has limited circulation that I have come to respect is Grant's Interest Rate Observer, published by James Grant.

His November 10 issue has a front page commentary titled, ''On the Advisability of Not Defaulting.''

It approaches the question of default from a slightly different perspective that I believe my colleagues should note.

I ask that the commentary be printed in the RECORD.

The material follows:

[From Grant's Interest Rate Observer, Nov. 10, 1995]

ON THE ADVISABILITY OF NOT DEFAULTING

Over the past 12 months, the 30-year Treasury bond actually delivered a higher total return than the stock market (source: the authoritative center pages of this publication). The margin of outperformance, 32.92% to 29.60%, was remarkably strong for an asset class that is under the cloud of default.

It would be better if there were no default, we think. Over the past 46 years, according to our friends at Ryan Labs, income contributed a little more than 100% of the total return of the overall Treasury market. Thus, the contribution of capital gains to the same calculation—the bear market lasted for 34½ years, until September 1981—was less than zero.

Because the bond is an income security, low interest rates work a hardship on bondholders. Default would work the ultimate hardship. To achieve the identical 32.92% total return in the next 12 months, Ryan calculates, the current 30-year Treasury would have to rally to a yield of 4.59%. Over the past five years, the long bond has produced a total return of 12.35%; to reproduce that feat in the next five years would require a rally to 3.60%. To match the past decade's total return of 11.48%, the 30-year Treasury would have to rally to 0.29%. Repeat: 0.29%.

Since May 1974, bonds have delivered 12-month total returns in excess of those achieved by stocks in no fewer than 110 months, a fact almost guaranteed to win a bar bet from any stock market chauvinist who insists that the returns to management, diligence, hard work and ingenuity should, by right, exceed those to coupon clipping.

Perhaps the creditor class isn't finished yet. As the graph on pages six and seven points up, bond market out-performance is rarely a one-month flash in the pan; it tends to roll on. But that is a question of relative return. The immediate risk of default is one of absolute performance, not in the short run but over the long pull. One long-term risk is the precedent of default (to be technical, this would be the second American default; in 1933, the government abrogated the contracts under which it had promised to pay gold to its bondholders). A second is that the temporary nonpayment of interest and principal would cause intelligent people to reexamine the nation's monetary institutions. Wondering about the whereabouts of their money, they might turn to the Federal Reserve's balance sheet. Reading it, they would observe: non-interest-bearing currency on the liabilities side; Treasury securities on the asset side. Their eyes would flash to a footnote: $484 billion in Treasurys held in custody by the Federal Reserve for the account of foreign central banks.

A very intelligent American reader would come to appreciate that he or she is the beneficiary of a vast fandango. The world has willingly come to accept the promises of this government, either in interest-bearing or non-interest-bearing form. The half-trillion dollars or so worth of dollar securities visibly held by foreign central banks constitute the evidence not of American strength but of weakness. Mainly, they represent the track of currency intervention. Buying dollars, the central banks turn them in for U.S. government securities. It is an indirect gift.

Another subversive feature of a Treasury default is that it would turn the spotlight on other classes of non-interest-bearing investments. Of these, perhaps none is so lowly as gold, which this year has caused even its few remaining friends to despise it. However, notes Peter McTeague, of MCM TradeWatch, Boston, gold option volatility has collapsed, speculators are short the market, central banks are hostile toward it and producers continue to sell the metal forward (the proof of which is a gold lease rate that has surged to 2.3% from 1.8% in the past month: even at the lower yield, it would represent towering value in the Japanese bond markets). On Tuesday came news that the output of the South African mining industry is closing in on a 40-year low; a spokesman for the Anglo American Corp. described the country's gold operations as being in a ''state of managed decline.'' The other day, a friend described his own growing, unfashionable bullishness toward gold. However, he added before hanging up: ''I'm not sure I want my name used with this.'' It has been a vale of tears.●

COMMON SENSE PRODUCT LIABILITY REFORM ACT

Mr. PRESSLER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 956, a bill to establish legal standards and procedures for product liability litigation, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 956) entitled ''An Act to establish legal standards and procedures for product liability litigation, and for other purposes'', and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House:

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference: Mr. Hyde, Mr. Sensenbrenner, Mr. Gekas, Mr. Inglis of South Carolina, Mr. Bryant of Tennessee, Mr. Conyers, Mrs. Schroeder, and Mr. Berman.

As additional conferees from the Committee on Commerce, for consideration of the House bill and the Senate amendment, and modifications committed to conference: Mr. Bliley, Mr. Oxley, Mr. Cox of California, Mr. Dingell, and Mr. Wyden.

Mr. PRESSLER. I move that the Senate insist on its amendments, agree to the request from the House for a conference, and that the Chair be authorized to appoint conferees.

The motion was agreed to; and the Presiding Officer (Mr. GORTON) appointed Mr. PRESSLER, Mr. GORTON, Mr. LOTT, Mr. STEVENS, Ms. SNOWE, Mr. ASHCROFT, Mr. HOLLINGS, Mr. INOUYE, Mr. FORD, Mr. EXON, and Mr. ROCKEFELLER conferees on the part of the Senate.

MEASURE READ FOR FIRST TIME—S. 1432

Mr. PRESSLER. Mr. President, I send the enclosed bill to the desk and ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The assistant legislative clerk read as follows:

A bill (S. 1432) to amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the Social Security earnings limit for individuals who have attained retirement age, and for other purposes.

Mr. PRESSLER. I now ask for its second reading.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. I object to my own request.

The PRESIDING OFFICER. The bill will remain at the desk until the next legislative day.

ORDERS FOR WEDNESDAY, NOVEMBER 29, 1995

Mr. PRESSLER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 9:30 a.m., Wednesday, November 29, that following the prayer, the Journal of proceedings be approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, and there be a period for morning business until the hour of 10 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exception: Senator DASCHLE for 30 minutes.

I further ask unanimous consent that at 10 a.m., the Senate proceed to consideration of calendar 226, S. 1316, the Safe Drinking Water Act.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I wish to amend my unanimous-consent request.

I ask unanimous consent that when the Senate adjourns, the Senate stand in adjournment until the hour of 10 a.m., Wednesday, November 29, 1995, and that the 30 minutes for Senator DASCHLE be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. PRESSLER. For the information of all Senators, the Senate will begin debate on the Safe Drinking Water Act at 10 a.m., tomorrow morning.

Amendments are anticipated to S. 1316. Therefore, Senators can expect rollcall votes during Wednesday's session.

It is also possible that the Senate will consider the VA–HUD appropriations conference report if received from the House.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. PRESSLER. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:35 p.m., adjourned until Wednesday, November 29, 1995, at 10 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate November 27, 1995, under authority of the order of the Senate of January 4, 1995:

THE JUDICIARY

ANN L. AIKEN, OF OREGON, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF OREGON VICE JAMES H. REDDEN, RETIRED.

JOSEPH A. GREENAWAY, OF NEW JERSEY, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY VICE JOHN F. GERRY, RETIRED.

FAITH S. HOCHBERG, OF NEW JERSEY, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY VICE H. LEE SAROKIN, ELEVATED.

ANN D. MONTGOMERY, OF MINNESOTA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA VICE DIANA E. MURPHY, ELEVATED.

Executive nominations received by the Senate November 28, 1995:

DEPARTMENT OF THE TREASURY

JAMES E. JOHNSON, OF NEW JERSEY, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE RONALD K. NOBLE.

DEPARTMENT OF DEFENSE

H. MARTIN LANCASTER, OF NORTH CAROLINA, TO BE AN ASSISTANT SECRETARY OF THE ARMY, VICE NANCY PATRICIA DORN, RESIGNED.

NATIONAL COMMISSION OF LIBRARIES AND INFORMATION SCIENCE

LEVAR BURTON, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 2000, VICE KAY W. RIDDLE, TERM EXPIRED.

IN THE COAST GUARD

THE FOLLOWING REGULAR OFFICERS OF THE U.S. COAST GUARD FOR PROMOTION TO THE GRADE OF LIEUTENANT COMMANDER IN THE COAST GUARD:

MICHAEL S. FIJALKA
JOSEPH P. SARGENT JR.
GERALD E. ANDERSON
KRISTOPHER G. FURTNEY
GEORGE E. BUTLER
GARY A. SCHENK
MARGARET S. BOSIN
GUY R. THERIAULT
RICHARD A. SPARACINO
MARK S. HEMANN
GREGORY A. CRUTHIS
RALPH HAES
CHARLES D. DAHILL
STEVEN R. GODFREY
WESLEY E. DRIVER
EDWARD B. SWIFT
WALTER B. WRZESNIEWSKI
FRANCIS J. ELFRING
PHILLIP F. DOLIN
MICHAEL A. WALZ
NICHOLAS F. RUSSO
BRYAN R. EMOND
DALE M. JONES JR.
CHRISTOPHER P. SCRABA
STEPHEN C. ROTHCHILD
BYRON H. ROMINE
MICHAEL W. SHOMIN
MEREDITH L. AUSTIN
GARY G. LAKIN
STEPHEN S. SCARDEFIELD
JOSEPH D. PHILLIPS
CARLYLE A. BLOMME
KELLY S. STRONG
THOMAS J. HUGHES
WAYNE D. CAWTHORN
JOSEPH C. MCGUINESS
FRANK H. KINGETT
DANIEL J. CHRISTOVICH
ROBIN E. KANE
ROBERT B. WATTS
KEITH J. TURRO
LORI A. MATHIEU
DAVIS L. KONG
EDWARD J. GIBBONS
MANUEL R. RARAS III
EDWARDO GAGARIN
MATTHEW E. MILLER
DAVID M. SINGER
DOUGLAS H. OLSON
LINCOLN H. BENEDICT
SCOTT A. FLEMING
BRIAN F. POSKAITIS
KEVIN P. CRAWLEY
TERRY L. HOOVER
DUANE F. RUMPCA
DANIEL S. ROTERMUND
ADOLPH L. KEYES
RONALD L. RODDMAN
JOHN T. FOX
MARK R. DIX
JAMES R. MANNING
NANCY R. GOODRIDGE
STEVEN A. WEIDEN
JOSEPH J. TUROSKY III
ERIC J. FORDE
THOMAS A. SAINT, JR.
CHARLES A. SCHUE III
FREDERICK A. SALISBURY
MICHAEL C. RYAN
WESLEY S. TRULL
GUY A. MCARDLE
ROGER V. BOHNERT
GEORGE J. BOWEN II
JOHN A. MEEHAN
WILLIAM J. ZIEGLER
DOUGLAS W. STEPHEN
Douglas R. McCrimmon, Jr.
David P. Dangelo
Douglas W. Simpson
Brian L. Dunn
Kenneth J. Reynolds
DOUGLAS I. HATFIELD
BRENTON S. MICHAELS
JOSEPH A. LUKINICH, JR.
RONDAL B. LITTERELL
DAVID C. HOARD
CARL B. HANSEN
GREGORY S. OMERNIK
ERNEST M. GASKINS
BRIAN A. SANBORN
HOWARD R. WHITE
Alberto L. Perez-Vergara
William F. Imle
Linn M. Carper
Jerry R. Honeycutt, Jr.
Joseph B. Kolb
Frederick E. Bartlett
Andrew W. Connor
Gerald A. Green
Carolyn M. Deleo
Robert B. Burris
Christopher L. Roberge
Jon G. Beyer
Patrick Little
John D. Sharon
Michael B. Christian
Michael F. McAllister
Tommey H. Meyers
Matthew Von Ruden
Karl J. Gabrielsen
James S. Plugge
Daniel T. Pippenger
Werner A. Winz
Thomas E. Hickey
Christopher J. Tomney
Mark T. Lunday
James R. Lee
John N. Healey
Kurt A. Van Horn
Mark Dietrich
Hung M. Nguyen
John R. Caplis
Steven T. Baynes
Todd S. Turner
Gregory C. Busch
James J. Fisher
Robert T. Vicente
Timothy A. Cook
Brian C. Emrich
Catherine A. Haines
Todd K. Watanabe
Brendan C. Frost
Michael R. Hicks
Jacob R. Ellefson
JAMES L. KNIGHT
LAURA L. SCHMITT
JAMES F. MARTIN
CHRISTINE C. PIPPENGER
ELIZABETH A. LASICKI
STEVEN C. TRUHLAR
GARY M. THOMAS
JAY JEWESS
CHRISTOPHER YAKABE
DAVID A. VAUGHN
GEOFFREY A. TRIVERS
STEVEN V. CARLETON
ROBERT S. BURCHELL
ROBERT E. BROGAN
TERANCE E. KEENAN
LAURIE J. MOSIER
MARK S. OGLE
WAYNE P. BROWN
TIMOTHY P. LEARY
BRANDT G. ROUSSEAUX
JAMES M. HEINZ
MARK P. PETERSON
BYRON E. THOMPSON
MICHAEL A. MOHN
GREGORY J. SUNDGAARD
RICHARD K. HUNT
PAUL S. SZWED
MARK A. TRUE
MARK A. CAWTHORN
KATHRYN L. OAKLEY
BARRY A. COMPAGNONI
ROBERT J. KLAPPROTH
CRAIGN L. ELLER
MARK E. DOLAN
FREDERICK G. MYER
CHARLES A. TURNER
CHRISTOPHER D. BREWTON
DALE A. BOUFFIOU
CHRIS A. NETTLES
LIA E. DEBETTENCOURT
JOHN G. HORNBUCKLE
MARK J. METOYER
Richard E. Petherbridge
Craig A. Lindsey
KIMBERLY J. NETTLES

IN THE AIR FORCE

THE FOLLOWING OFFICERS, U.S. AIR FORCE OFFICER TRAINING SCHOOL, FOR APPOINTMENT AS SECOND LIEUTENANTS IN THE REGULAR AIR FORCE, UNDER THE PROVISIONS OF SECTION 531 OF TITLE 10, UNITED STATES CODE; WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE:

TODD D. BERGMAN, 000–00–0000
WALTER T. BERRIDGE, 000–00–0000
PETER M. BONETTI, 000–00–0000
JOHN E. BUCHANAN, 000–00–0000
MICHAEL S. BUCHER, 000–00–0000
CRAIG A. CAMPBELL, 000–00–0000
MARK L. CHAFE, 000–00–0000
TARA A. CUNNINGHAM, 000–00–0000
SUZANNE M. DEAN, 000–00–0000
STACIA A. EASLEY, 000–00–0000
TODD B. EBERT, 000–00–0000
DAMON C. FRANKLIN, 000–00–0000
LISA M. GEVRY, 000–00–0000
PAUL L. HARTMAN, 000–00–0000
SUSAN E. IDZIAK, 000–00–0000
DARRYL N. LEON, 000–00–0000
ROBERT D. LORTON, 000–00–0000
JAMES R. MCGLONE, 000–00–0000
ROBERT B. MOORE, 000–00–0000
KATHLEEN J. OROURKE, 000–00–0000
CRAIG M. PERRY, 000–00–0000
RANDALL D. POLLAK, 000–00–0000
JOHN K. PROCTOR, 000–00–0000
TORRENCE W. SAXE, 000–00–0000
JENNIFER M. SHORT, 000–00–0000
ANTHONY W. SNODGRASS, 000–00–0000
THOMAS A. VALENTINE, JR., 000–00–0000
GINA D. VOELZKE, 000–00–0000
JEFFERY M. WOLIVER, 000–00–0000
SCOTT J. WOOLLARD, 000–00–0000

THE FOLLOWING-NAMED AIR NATIONAL GUARD OFFICERS FOR APPOINTMENT AS RESERVE OF THE AIR FORCE IN THE GRADE INDICATED UNDER THE PROVISIONS OF SECTIONS 12203 AND 12212, TITLE 10, UNITED STATES CODE, TO PERFORM DUTIES AS INDICATED.

MEDICAL CORPS

To be lieutenant colonel

RUTH T. LIM, 000–00–0000
BARRETT F. SCHWARTZ, 000–00–0000

IN THE ARMY

THE FOLLOWING-NAMED OFFICER, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTIONS 624 AND 628, TITLE 10, UNITED STATES CODE. THE OFFICER IS ALSO BEING NOMINATED FOR REGULAR ARMY APPOINTMENT IN ACCORDANCE WITH SECTION 531 OF TITLE 10, UNITED STATES CODE.

NELSON L. MICHAEL, 000–00–0000

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624 OF TITLE 10, UNITED STATES CODE.

JUDGE ADVOCATE GENERAL'S CORPS

To be colonel

ROBERT L. ACKLEY, 000–00–0000
KEVIN W. BOND, 000–00–0000
KEVIN W. CARTER, 000–00–0000
JAMES S. CURRIE, 000–00–0000
HARRY L. DORSEY, 000–00–0000
ULDRIC L. FIORE, 000–00–0000
EDWARD W. FRANCE, 000–00–0000
JUDITH M. GUARINO, 000–00–0000
THOMAS W. MCSHANE, 000–00–0000
JOHN H. NOLAN III, 000–00–0000
JAMES F. QUINN, 000–00–0000
PHILIP A. SAVOIE, 000–00–0000
LARRY D. VICK, 000–00–0000
DANIEL V. WRIGHT, 000–00–0000

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 3353 AND 12203(A) AND 12207:

MEDICAL CORPS

To be lieutenant colonel

PAUL A. OSTERGAARD, 000–00–0000

THE FOLLOWING NAMED OFFICERS ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624 OF TITLE 10, UNITED STATES CODE.

JUDGE ADVOCATE GENERAL'S CORPS

To be lieutenant colonel

CHARLES W. BACCUS, 000–00–0000
DIANE E. BEAVER, 000–00–0000
GREGORY O. BLOCK, 000–00–0000
STEPHEN W. BROSS, 000–00–0000
DANA K. CHIPMAN, 000–00–0000
MICHAEL P. COMODECA, 000–00–0000
WILLIAM F. CONDRON, 000–00–0000
MARK J. CONNOR, 000–00–0000
DAVID N. DINER, 000–00–0000
THEODORE E. DIXON, 000–00–0000
THOMAS W. DWORSCHAK, 000–00–0000
KARL M. ELLCESSOR, 000–00–0000
TERRY L. ELLING, 000–00–0000
THOMAS K. EMSWILER, 000–00–0000
FRANK W. FOUNTAIN, 000–00–0000
JOSEPH T. FRISK, 000–00–0000
KARL M. GOETZKE, 000–00–0000
KENNETH T. GRANT, 000–00–0000
NATALIE L. GRIFFIN, 000–00–0000
RICHARD O. HATCH, 000–00–0000
PAUL P. HOLDEN, 000–00–0000
DAVID B. HOWLETT, 000–00–0000
WILLIAM A. HUDSON, 000–00–0000
RICHARD A. JAYNES, 000–00–0000
JOHN C. KENT, 000–00–0000
WILLIAM KILGALLIN, 000–00–0000
JAMES E. MACKLIN, 000–00–0000
DIANA MOORE, 000–00–0000
LAWRENCE J. MORRIS, 000–00–0000
PATRICK D. OHARE, 000–00–0000
PAUL M. PETERSON, 000–00–0000
MARSHA A. SAJER, 000–00–0000
DANIEL P. SHAVER, 000–00–0000
SANDRA B. STOCKEL, 000–00–0000
KATHRYN STONE, 000–00–0000
STEVEN T. STRONG, 000–00–0000
ROBERT D. TEETSEL, 000–00–0000
CRAIG E. TELLER, 000–00–0000
GAYLEN G. WHATCOTT, 000–00–0000
DEANA M. WILLIS, 000–00–0000
DONNA M. WRIGHT, 000–00–0000

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624 OF TITLE 10, UNITED STATES CODE AND FOR REGULAR APPOINTMENT IN ACCORDANCE WITH SECTION 531 OF TITLE 10, UNITED STATES CODE:

CHAPLAIN

To be major

MARK E. BENZ, 000–00–0000
STEVEN L. BERRY, 000–00–0000
KENNETH W. BUSH, 000–00–0000
ROBERT M. COFFEY, 000–00–0000
ROGER D. CRINER, 000–00–0000
ANIBAL CRUZBAEZ, 000–00–0000
KAREN J. DIEFENDORF, 000–00–0000
RANDALL C. DOLINGER, 000–00–0000
MICHAEL W. DUGAL, 000–00–0000
THOMAS E. ENGLE, 000–00–0000
DONALD W. EUBANK, 000–00–0000
JOHN M. FOXWORTH, 000–00–0000
GUY E. GLAD, 000–00–0000
THOMAS C. HARTMANN, 000–00–0000
CHARLES M. HERRING, 000–00–0000
THOMAS E. KILLGORE, 000–00–0000
RODNEY A. LINDSAY, 000–00–0000
JOHN D. LITTLE, 000–00–0000
DENNIS W. MADTES, 000–00–0000
DANIEL J. MINJARES, 000–00–0000
ONERRAY, NEAL, 000–00–0000
CHRISTOPHER C. NG, 000–00–0000
JOHN D. POTTER, 000–00–0000
JERRY D. POWELL, 000–00–0000
DIETER E. SCHWARTZ, 000–00–0000
RONALD H. THOMAS, 000–00–0000
JON P. TIDBALL, 000–00–0000
JOHN W. WILSON, 000–00–0000
PHILLIP F. WRIGHT, 000–00–0000
STEVEN R. YOUNG, 000–00–0000

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES, IN THEIR ACTIVE DUTY GRADE, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 531, 532, AND 533:

ARMY NURSE CORPS

To be first lieutenants

VINCENT B. BOGAN, 000–00–0000
FRANCIS J. BORSEY, JR., 000–00–0000
TERRY J. BROWN, 000–00–0000
FRANK LEE, 000–00–0000

To be captains

BRENDA A. BLATT, 000–00–0000
PAUL A. KENNEDY, 000–00–0000
MARIO C. MALLARI, 000–00–0000
TRENT N. TALBERT, 000–00–0000
ROY D. THURSTON, 000–00–0000

To be majors

PATRICIA M. LEROUX, 000–00–0000
CLAYTON J. NEIL, 000–00–0000
LINDA S. WEAVER, 000–00–0000

To be lieutentant colonel

JEAN M. DAILEY, 000–00–0000

To be colonel

JERI. I. GRAHAM, 000–00–0000

MEDICAL SERVICE CORPS

To be first lieutenants

THOMAS S. BUNDT, 000–00–0000
LISA M. HARVEY, 000–00–0000
ROBERT C. HOERAUF, 000–00–0000
WILLIAM J. KAYS, 000–00–0000
ERIC M. MAROYKA, 000–00–0000
STACY A. MOSKO, 000–00–0000
PATRICK W. PICARDO, 000–00–0000
MICHAEL W. SMITH, 000–00–0000
THERESA E. VOWELS, 000–00–0000
KEITH A. WAGNER, 000–00–0000

To be captains

TIMOTHY H. DIXON, 000–00–0000
EVELYN GAVIN, 000–00–0000
JEFFREY S. HILLARD, 000–00–0000
MOHAMED S. IBRAHIM, 000–00–0000
DAVID L. KELLMEYER, 000–00–0000
MARK B. LITTLE, 000–00–0000
BRIAN E. MAC MANUS, 000–00–0000
WILLIAM F. STARNES, 000–00–0000
AMY L. SWIECICHOWSKI, 000–00–0000
KIMBERLY THOMPSON, 000–00–0000
JULIAN VELASQUEZ, 000–00–0000
BEATE M. WRIGHT, 000–00–0000
TOU T. YANG, 000–00–0000

To be majors

LORRAINE A. BABEU, 000–00–0000
BENJAMIN P. FRENCH, 000–00–0000
LARRY C. JAMES, 000–00–0000

To be lieutenant colonel

CARL E. SMITH, 000–00–0000

VETERINARY CORPS

To be captain

SHANNON A. STUTLER, 000–00–0000

To be major

ROGER W. PARKER, 000–00–0000

MEDICAL CORPS

To be colonels

JAMES L. BESON, 000–00–0000
THOMAS M. CASHMAN, 000–00–0000
JAMES T. HARDY, 000–00–0000
DAVID L. MICHAELS, 000–00–0000
ALBERT J. MORENO, 000–00–0000
THEODORE R. MC NITT, 000–00–0000
ROBERT L. REED, 000–00–0000
PURNIMA SAU, 000–00–0000
ARTURO T. SISON, 000–00–0000
RICHARD O. SUTTON, JR., 000–00–0000

To be lieutenant colonels

SHELBY R. BRAMMER, 000–00–0000
FREDERICK B. BROWN, 000–00–0000
MICHAEL A. CAWTHON, 000–00–0000
RALPH L. DRU, 000–00–0000
LOUIS A. HIEB, 000–00–0000
AURORA G. KELLOGG, 000–00–0000
SEUNG I. KIM, 000–00–0000
ROBERT E. LEWIS, 000–00–0000
RICHARD H. MOORE, 000–00–0000
ELMER J. PACHECO, 000–00–0000
VIJAY K. SANGAR, 000–00–0000
PHILLIP J. TODD, 000–00–0000
RONALD P. TURNICKY, 000–00–0000

To be majors

LARRY K. ANDREO, 000–00–0000
DAVID A. KRISTO, 000–00–0000
JUAN M. LOPEZ, 000–00–0000
LOREE K. SUTTON, 000–00–0000

DENTAL CORPS

To be colonel

RAY D. DERRINGER, 000–00–0000

To be majors

PETE MINES, 000–00–0000
VINCENT VISSICHELLI, 000–00–0000

To be captain

ROBERT R. BALVAN, JR., 000–00–0000

ARMY MEDICAL SPECIALIST CORPS

To be lieutenant colonel

BRENDA F. MOSLEY, 000–00–0000

To be major

MARY S. LOPEZ, 000–00–0000

To be captains

LARRY G. HARRIS, 000–00–0000
KAREN S. KAMINSKI, 000–00–0000

THE FOLLOWING-NAMED RESERVE OFFICERS' TRAINING CORPS CADETS FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES, IN THE GRADE OF SECOND LIEUTENANT, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 531, 532, 533, AND 2106:

JASON M. COLBERT, 000–00–0000
CHARLES R. GEIB, 000–00–0000
THOMAS J. GRUBER, 000–00–0000
JOHN E. HOWELL, 000–00–0000
HEATHER R. MANUS, 000–00–0000
DANIEL E. MAZZEI, 000–00–0000
JOHN D. MC CREADY, 000–00–0000
MICHAEL J. MC GUIRE, 000–00–0000
COREY R. SISLER, 000–00–0000
SCOTT A. WHITE, 000–00–0000
SCOTT D. WILKINSON, 000–00–0000
BETTY ZIMMERMAN, 000–00–0000

THE FOLLOWING-NAMED HONOR GRADUATES FROM THE OFFICER CANDIDATE SCHOOL FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES, IN THE GRADE OF SECOND LIEUTENANT, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 531, 532, AND 533:

GRAHAM J. COMPTON, 000–00–0000
GARY TREVINO, 000–00–0000

THE FOLLOWING-NAMED GRADUATES, GRADUATING CLASS OF 1995, U.S. AIR FORCE ACADEMY WHO HAVE REQUESTED APPOINTMENT IN THE REGULAR ARMY IN THE GRADE OF SECOND LIEUTENANT UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 531(A) AND 99541:

ALEJANDOR ANTUNEZ, 000–00–0000
THOMAS A. BRIEN, 000–00–0000
BARRY A. BURNS, 000–00–0000
DEREK C. HAM, 000–00–0000
ZACHARY N. HESS, 000–00–0000
SHAWN E. LEONARD, 000–00–0000
CHRISTOPHER LIONTAS, 000–00–0000
JOHN F. MURRAY, 000–00–0000
KEVIN B. PRICE, 000–00–0000
WILLIAM P. SAMMON, 000–00–0000
PHILLIP R. STEWART, 000–00–0000
KEVIN G. WEAVER, 000–00–0000

THE FOLLOWING-NAMED GRADUATES, GRADUATING CLASS OF 1995, U.S. NAVAL ACADEMY WHO HAVE REQUESTED APPOINTMENT IN THE REGULAR ARMY IN THE GRADE OF SECOND LIEUTENANT UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 531(A) AND 99541:

DAVID W. GORDON, 000–00–0000
KRISTA E. MURPHY, 000–00–0000

IN THE AIR FORCE

THE FOLLOWING OFFICERS, ON THE ACTIVE DUTY LIST, FOR APPOINTMENT IN THE REGULAR AIR FORCE IN ACCORDANCE WITH SECTION 531 OF TITLE 10, UNITED STATES CODE, WITH GRADE AND DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE PROVIDED THAT IN NO CASE SHALL THE OFFICERS BE APPOINTED IN A GRADE HIGHER THAN CAPTAIN.

LINE

JAMES P. AARON, 000–00–0000
DAVID M. ABERNETHY, 000–00–0000
LEONIDES R. ABREO, 000–00–0000
TODD M. ACKERMAN, 000–00–0000
JOHN F. ACKERMANN, 000–00–0000
CHRISTOPHER J. ADAMS, 000–00–0000
TERRY A. ADAMS, 000–00–0000
THOMAS L. ADAMS, 000–00–0000
WALLACE L. ADDISON, 000–00–0000
RUSSELL G. ADELGREN, 000–00–0000
MARK L. ADKINS, 000–00–0000
MICHAEL J. AFTOSMIS, 000–00–0000
DANIEL E. AGRAMONTE, 000–00–0000
ROYALAN C. AGUSTIN, 000–00–0000
GREGORY C. AHLQUIST, 000–00–0000
PATRICK N. AHMANN, 000–00–0000
BRIAN D. AKINS, 000–00–0000
JACQUELINE A.F. ALBRIGHT, 000–00–0000
ERNEST F. ALBRITTON, JR., 000–00–0000
PAUL D. ALDERMAN, 000–00–0000
RICHARD T. ALDRIDGE, 000–00–0000
ALEJANDRO J. ALEMAN, 000–00–0000
JEFFREY S. ALEXANDER, 000–00–0000
NATHAN B. ALHOLINNA, 000–00–0000
ALEE R. ALI, 000–00–0000
CATHERINE A. ALINOVI, 000–00–0000
KEITH A. ALLBRITTEN, 000–00–0000
LISA C. ALLEN, 000–00–0000
TIMOTHY C. ALLMAN, 000–00–0000
JOHN M. ALSPAUGH, 000–00–0000
JAMES W. ALSTON, 000–00–0000
JOHN S. ALSUP, 000–00–0000
RUBEN ALTUNIAN, 000–00–0000
DENIO A. ALVARADO, 000–00–0000
EMMANUEL R. ALVAREZ, 000–00–0000
IGNACIO G. ALVAREZ, 000–00–0000
RICHARD C. AMBURN, 000–00–0000
STEVEN J. AMENT, 000–00–0000
MATTHEW G. ANDERER, 000–00–0000
WILLIAM D. ANDERSEN, 000–00–0000
CHRISTINA M. ANDERSON, 000–00–0000
DANIEL L. ANDERSON, 000–00–0000
JEM P. ANDERSON, 000–00–0000
KREG M. ANDERSON, 000–00–0000
LYNN R. ANDERSON, 000–00–0000
MATTHEW P. ANDERSON, 000–00–0000
MICHAEL D. ANDERSON, 000–00–0000
ROBERT A. ANDERSON, 000–00–0000

ROBERT H. ANDERSON, 000–00–0000
STEPHEN L. ANDREASEN, 000–00–0000
EDWARD W. ANDREWS, 000–00–0000
HAROLD G. ANDREWS II, 000–00–0000
PETER J. ANDREWS, 000–00–0000
JOSEPH F. ANGEL, 000–00–0000
BENJAMIN C. ANGUS, 000–00–0000
RICHARD A. ANSTETT, 000–00–0000
ROBERT D. APLINGTON, 000–00–0000
REBECCA J. APPERT, 000–00–0000
KENNETH M. APPEZZATO, 000–00–0000
GREGORY S. ARMAND, 000–00–0000
BORIS R. ARMSTRONG, 000–00–0000
DALE W. ARMSTRONG, 000–00–0000
MARK A. ARMSTRONG, 000–00–0000
WAYNE P. ARMSTRONG, 000–00–0000
DAVID C. ARNOLD, 000–00–0000
JASON W. ARNOLD, 000–00–0000
BRUCE A. ARRINGTON, 000–00–0000
AMY V. ARWOOD, 000–00–0000
MYRON H. ASATO, 000–00–0000
CHRISTOPHER D. ASHABRANNER, 000–00–0000
JOHN R. ASKREN, 000–00–0000
DONALD A. ASPDEN, 000–00–0000
MARK C. ASTIN, 000–00–0000
IRA R. ASTRACHAN, 000–00–0000
RUDOLPH E. ATALLAH, 000–00–0000
ROBIN D. ATHEY, 000–00–0000
KORVIN D. AUCH, 000–00–0000
LAWRENCE F. AUDET, JR., 000–00–0000
BRIAN K. AUGSBURGER, 000–00–0000
WARREN G. AUSTIN, 000–00–0000
RICHARD J. AUTHIER, JR., 000–00–0000
ROBERT M. BABB, 000–00–0000
CHRISTOPHER S. BABBIDGE, 000–00–0000
SCOTT E. BABOS, 000–00–0000
JONATHAN C. BACHTOLD, 000–00–0000
ERIC P. BAENEN, 000–00–0000
AMANDA B. BAILEY, 000–00–0000
KALLEN R. BAILEY, 000–00–0000
MARK A. BAIRD, 000–00–0000
ANDREW N. BAKER, 000–00–0000
RALPH T. BAKER, 000–00–0000
ROBERT A. BAL, 000–00–0000
GUSTAVE B. BALDWIN, 000–00–0000
REECE S. BALDWIN, 000–00–0000
JOHN P. BALL, JR. 000–00–0000
JOY M. BALL, 000–00–0000
DOUGLAS A. BALLINGER, 000–00–0000
ROBERT M. BAMRICK, 000–00–0000
JOSEPH J. BANIAK, 000–00–0000
PAUL J. BANKS, 000–00–0000
ANTHONY E. BARBARISI, 000–00–0000
TINA M. BARBERMATTHEW, 000–00–0000
RICHARD G. BARINGER, 000–00–0000
ERIC C. BARKER, 000–00–0000
TONY L. BARKER, 000–00–0000
PHILLIP B. BARKS, 000–00–0000
WARREN P. BARLOW, 000–00–0000
DAVID J. BARNES, 000–00–0000
BRIAN T. BARNSLEY, 000–00–0000
ROGER A. BARR, 000–00–0000
BRUCE C. BARTHOLOMEW, 000–00–0000
DAVID R. BARTKOWIAK, 000–00–0000
WILLIAM C. BARTON, 000–00–0000
STEVEN L. BASHAM, 000–00–0000
RANDALL G. BASS, 000–00–0000
PETER D. BASTIEN, 000–00–0000
AARON BATULA, 000–00–0000
MARILYN J. BAUER, 000–00–0000
DAVID J. BAYLOR, 000–00–0000
SONJE F. BEAL, 000–00–0000
JOHN D. BEAN, 000–00–0000
MICHAEL N. BEARD, 000–00–0000
STEPHEN E. BEAUCHAMP, 000–00–0000
ANDREW C. BEAUDOIN, 000–00–0000
DAVID M. BEAUREGARD, 000–00–0000
BARRY D. BEAVERS, 000–00–0000
MATTHEW J. BECKAGE, 000–00–0000
JOSEPH P. BECKER, 000–00–0000
JEANNINE A. BEER, 000–00–0000
BRIAN R. BEERS, 000–00–0000
MICHAEL D. BEESON, 000–00–0000
PAUL R. BEGANSKY, II 000–00–0000
WAYNE E. BELL, 000–00–0000
WILLIAM G. BELT, 000–00–0000
DAVID B. BELZ, 000–00–0000
DANIEL W. BENEDICT, 000–00–0000
JEFFREY B. BENESH, 000–00–0000
BRIAN R. BENKEL, 000–00–0000
GREGORY N. BENNETT, 000–00–0000
JAMES A. BENNETT, 000–00–0000
KENNETH H. BENNETT, JR. 000–00–0000
MATTHEW A. BENNETT, 000–00–0000
ROBERT E. BENNING, 000–00–0000
JAMES M. BENSON, 000–00–0000
RICHARD W. BENSON, 000–00–0000
RALPH E. BENTLEY, 000–00–0000
KELLY P. BENTON, 000–00–0000
ERIC R. BENTS, 000–00–0000
SCOTT I. BENZA, 000–00–0000
ERIC A. BERBERICH, 000–00–0000
ANTHONY P. BERG, 000–00–0000
ERIC W. BERG, 000–00–0000
JEFFREY C. BERGDOLT, 000–00–0000
WILLIAM S. BERGMAN, 000–00–0000
KURT A. BERGO, 000–00–0000
LEONARD M. BERMAN, 000–00–0000
DANIEL C. BERNAZANI, 000–00–0000
ALAN R. BERRY, 000–00–0000
JOHN N. BERRY, 000–00–0000
SYLVIA M. BERTOT, 000–00–0000
LINDA K. BETHKE, 000–00–0000
BRIAN A. BETTS, 000–00–0000
GEORGE D. BEVILACQUA, 000–00–0000
CRAIG ALAN C. BIAS, 000–00–0000
ROBERT W. BICKEL, 000–00–0000
LEE A. BIELSTEIN, 000–00–0000
GREG S. BIERMAN, 000–00–0000
SCOTT E. BILLHARTZ, 000–00–0000
GREGORY A. BINGHAM, 000–00–0000
MICHAEL O. BIRKELAND, 000–00–0000
ROGER K. BISHOP, 000–00–0000
TIMOTHY G. BISHOP, 000–00–0000
STEPHEN H. BISSONNETTE, 000–00–0000
PAUL W. BIVENS, 000–00–0000
JOSEPH P. BLACK, 000–00–0000
MARK L. BLACK, 000–00–0000
DAVID T. BLACKWELL, 000–00–0000
KRISTINE E. BLACKWELL, 000–00–0000
JEFFREY E. BLALOCK, 000–00–0000
ALEXANDER J. BLANTON, 000–00–0000
PATRICIA D. BLAZAUSKAS, 000–00–0000
DAVID W. BLIESNER, 000–00–0000
AARON T. BLOCKER, 000–00–0000
GARRY M. BLOOD, 000–00–0000
DANIEL S. BLUE, 000–00–0000
MORRIS C. BLUMENTHAL, 000–00–0000
ROBERT M. BLYTHE, 000–00–0000
RANDY R. BODIFORD, 000–00–0000
DOUGLAS P. BODINE, 000–00–0000
EDWARD S. BODONY, 000–00–0000
JAMES M. BOGUSLAWSKI, 000–00–0000
MARTIN B. BOHN, 000–00–0000
TIMOTHY M. BOLDUC, 000–00–0000
DEWAYNE B. BOLLEN, 000–00–0000
RICHARD E. BOLTON, 000–00–0000
CRAIG L. BOMBERG, 000–00–0000
GREGORY L. BONAFEDE, 000–00–0000
ANTHONY F. BOND, 000–00–0000
JOHN D. BOND, 000–00–0000
MICHAEL H. BOND, 000–00–0000
STEVEN B. BONINE, 000–00–0000
ROBERT J. BONNEAU, 000–00–0000
DAVID C. BONNEY, 000–00–0000
JAMES I. BOOTH, 000–00–0000
SCOTT C. BORCHERS, 000–00–0000
MARK W. BORDEN, 000–00–0000
TONY C. BOREN, 000–00–0000
LINDSEY J. BORG, 000–00–0000
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DEXTER R. COX, JR., 000–00–0000
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HECTOR L. CRUZ, 000–00–0000
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CRAIG L. KAUFMAN, 000–00–0000
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RHONDA R. KAUFMAN, 000–00–0000
ADAM B. KAVLICK, 000–00–0000
SHEILA F. KEANE, 000–00–0000
MARK S. KEATING, 000–00–0000
PATRICK D. KEE, 000–00–0000
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EDWARD T. KEESEE, 000–00–0000
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DONALD E. KELLER, JR., 000–00–0000
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MARIANNE LUMSDEN, 000–00–0000
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NEIL S. MACLAUCHLAN, 000–00–0000
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JOHN H. MACNICOL, 000–00–0000
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DOUGLAS B. MADDOCK, JR. 000–00–0000
MITCHELL E. MADIS, 000–00–0000
TIMOTHY H. MAGUIRE, 000–00–0000
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RODNEY T. MARKS, 000–00–0000
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TONY R. MARLOWE, 000–00–0000
DEBORAH J. MARQUART, 000–00–0000
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WILLIAM D. MARSH, II 000–00–0000
PHILLIP W. MARSHALL, 000–00–0000
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MARIO R. MARTINS, 000–00–0000
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EDWARD J. MASTERSON, 000–00–0000
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RUSSEL A. MATIJEVICH, 000–00–0000
LANCE Y. MATSUSHIMA, 000–00–0000
DANE D. MATTHEW, 000–00–0000
AUDRA R. MATTHEWS, 000–00–0000
JOHN R. MATTHEWS, 000–00–0000
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PATRICIA C. MAULDIN, 000–00–0000
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ANDRE MCAFEE, 000–00–0000
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KYNA R. MCCALL, 000–00–0000
TIMOHTY O. MCCANN, 000–00–0000
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BERTRAM K. MEDLOCK, 000–00–0000
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JIMMIE L. MITCHELL JR., 000–00–0000
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ERIC KENNETH MIZE, 000–00–0000
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COLIN R. MOENING, 000–00–0000
OSCAR MOJICA, 000–00–0000
MARTHA M. MONROE, 000–00–0000
MARK D. MONTAGUE, 000–00–0000
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DARRYL W. MOON, 000–00–0000
ROGER H. MOON, 000–00–0000
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CHARLES E. MOORE, JR., 000–00–0000
KELLY M. MOORE, 000–00–0000
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RAY A. MOTTLEY, 000–00–0000
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TY C. MOYERS, 000–00–0000
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CHRISTOPHER R. NASH, 000–00–0000
JOSEPH B. NATTERER, 000–00–0000
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BRET G. NEELY, 000–00–0000
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DWIGHT C. SONES, 000–00–0000.
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STEVEN V. SOUTHWELL, 000–00–0000.
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FAY T. SPELLERBERG, 000–00–0000.
JOHN E. SPENCER, 000–00–0000.
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NELSON R. STURDIVANT, 000–00–0000
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DAWN MARIE SWEET, 000–00–0000
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JOHN M. TALLAROVIC, 000–00–0000
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WILLIAM M. TART, 000–00–0000
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EDWARD E. TATGE, 000–00–0000
JAMES M. TATON, 000–00–0000
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DONALD L. WILLIAMS, 000–00–0000
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VALERIE W. WILSON, 000–00–0000
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GRAND F. WONG, 000–00–0000
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BRIAN V. WOODS, 000–00–0000
NEIL E. WOODS, 000–00–0000
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AMY E. ZETZL, 000–00–0000
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STEVEN R. ZWICKER, 000–00–0000

THE FOLLOWING OFFICERS FOR APPOINTMENT IN THE REGULAR AIR FORCE UNDER SECTION 531 OF TITLE 10, UNITED STATES CODE, WITH A VIEW TO DESIGNATION UNDER SECTION 8067 OF TITLE 10, UNITED STATES CODE, TO PERFORM DUTIES INDICATED WITH GRADE AND DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE PROVIDED THAT IN NO CASE SHALL THE OFFICERS BE APPOINTED IN A GRADE HIGHER THAN CAPTAIN.

CHAPLAIN CORPS

GARY R. BREIG, 000–00–0000
KEVIN G. BROWNE, 000–00–0000
EFFSON CHESTER BRYANT, 000–00–0000
CHARLES R. CORNELISSE, 000–00–0000
MARVA Y. CROMARTIE, 000–00–0000
DAVID M. FITZPATRICK, 000–00–0000
PHILLIP C. GUIN, 000–00–0000
RONALD M. HARVELL, 000–00–0000
THOMAS D. KELLY, 000–00–0000
PHILIP S. LLANOS, 000–00–0000
MICHAEL A. MOORE, 000–00–0000
RANDALL E. ROBERTS, JR., 000–00–0000
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MICHAEL THORNTON, 000–00–0000
TIMOTHY P. WAGONER, 000–00–0000

NURSE CORPS

CARLENA A. ABALOS, 000–00–0000
BEATRICE A. ABBOTT, 000–00–0000
LAURA S. ABNEY, 000–00–0000
MARY E. ADDISON, 000–00–0000
ROSARIO AGANON, 000–00–0000
NOEMI ALGARINLOZANO, 000–00–0000
CATHERINE M. AMITRANO, 000–00–0000
BERNADETTE A. ANDERSON, 000–00–0000
CONNIE R. ANDERSON, 000–00–0000
LESLIE R. ANN, 000–00–0000
DENISE G. AUGUSTINE, 000–00–0000
STEVEN A. AUSTIN, 000–00–0000
CASSANDRA D. AUTRY, 000–00–0000
JUDITH A. BACHMAN, 000–00–0000
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VICTORIA J. BAILY, 000–00–0000
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SUSAN E. BASSETT, 000–00–0000
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MARIALOURDE BENCOMO, 000–00–0000
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IN THE AIR FORCE

THE FOLLOWING OFFICERS, ON THE ACTIVE DUTY LIST, FOR APPOINTMENT IN THE REGULAR AIR FORCE IN ACCORDANCE WITH SECTION 531, OF TITLE 10, U.S.C., WITH GRADE AND DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE PROVIDED THAT IN NO CASE SHALL THE OFFICERS BE APPOINTED IN A GRADE HIGHER THAN CAPTAIN.

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SUZANNE B. LIPCAMAN, 000–00–0000
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MARK D. LLEWELLYN, 000–00–0000
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STACY LOCKLEAR, JR., 000–00–0000
SCOTT M. LOCKWOOD, 000–00–0000
DOUGLAS T. LOEHR, 000–00–0000
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STEVEN M. LOKEN, 000–00–0000
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BETH A. LONG, 000–00–0000
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MAX LOPEZ, 000–00–0000
LESTER R. LORENZ, 000–00–0000
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MITCHELL E. MADIS, 000–00–0000
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ANDRE MC AFEE, 000–00–0000
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JOHN D. MC ARTHUR, 000–00–0000
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KYNA R. MC CALL, 000–00–0000
TIMOTHY O. MC CANN, 000–00–0000
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MARC C. MC WILLIAMS, 000–00–0000
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BERTRAM K. MEDLOCK, 000–00–0000
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OSCAR MOJICA, 000–00–0000
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JOHN P. POSSEL, 000–00–0000
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K. ELIZABETH PRUNEAU, 000–00–0000
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WILLIAM PUGH, 000–00–0000
JOSEPH C. PULIDO, 000–00–0000
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THEODORE R. SIEWERT, 000–00–0000
MANUEL G. SILVA, 000–00–0000
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TIEMAN D. SLAGH, 000–00–0000
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JOHN M. TARUTANI, 000–00–0000
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EDWARD E. TATGE, 000–00–0000
JAMES M. TATON, 000–00–0000
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THEO THEODOR, JR., 000–00–0000
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ALICE JANE THOMAS, 000–00–0000
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CHRISTOPHER G. THOMAS, 000–00–0000
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DWAYNE E. THOMAS, 000–00–0000
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JEFFERY L. THOMAS, 000–00–0000
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RICKY L. THOMPSON, 000–00–0000
ROBERT S. THOMPSON, JR., 000–00–0000
THOMAS J. THOMPSON, 000–00–0000
KENNETH P. N. THOMSON, 000–00–0000
ANDREW A. THORBURN, 000–00–0000
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JEROME T. TRAUGHBER, 000–00–0000
DOUGLAS J. TRAVERSA, 000–00–0000
SCOTT L. TRAXLER, 000–00–0000
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LARRY J. TRENT, 000–00–0000
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THE FOLLOWING OFFICERS FOR APPOINTMENT IN THE REGULAR AIR FORCE UNDER SECTION 531, OF TITLE 10, U.S.C. WITH A VIEW TO DESIGNATION UNDER SECTION 8067, OF TITLE 10, UNITED STATES CODE., TO PERFORM DUTIES INDICATED WITH GRADE AND DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE PROVIDED THAT IN NO CASE SHALL THE OFFICERS BE APPOINTED IN A GRADE HIGHER THAN CAPTAIN.

CHAPLAIN CORPS

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KEVIN G. BROWNE, 000–00–0000
EFFSON CHESTER BRYANT, 000–00–0000
CHARLES R. CORNELISSE, 000–00–0000
MARVA Y. CROMARTIE, 000–00–0000
DAVID M. FITZPATRICK, 000–00–0000
PHILLIP C. GUIN, 000–00–0000
RONALD M. HARVELL, 000–00–0000
THOMAS D. KELLY, 000–00–0000
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MICHAEL A. MOORE, 000–00–0000
RANDALL E. ROBERTS, JR., 000–00–0000
JIMMIE L. SANDERS, 000–00–0000
PAUL L. SHEROUSE, 000–00–0000
MICHAEL THORNTON, 000–00–0000
TIMOTHY P. WAGONER, 000–00–0000

NURSE CORPS

CARLENA A. ABALOS, 000–00–0000
BEATRICE A. ABBOTT, 000–00–0000
LAURA S. ABNEY, 000–00–0000
MARY E. ADDISON, 000–00–0000
ROSARIO AGANON, 000–00–0000
NOEMI ALGARINLOZANO, 000–00–0000
CATHERINE M. AMITRANO, 000–00–0000
BERNADETTE A. ANDERSON, 000–00–0000
CONNIE R. ANDERSON, 000–00–0000
LESLIE R. ANN, 000–00–0000
DENISE G. AUGUSTINE, 000–00–0000
STEVEN A. AUSTIN, 000–00–0000
CASSANDRA D. AUTRY, 000–00–0000
JUDITH A. BACHMAN, 000–00–0000
C. DIANNE BAILEY, 000–00–0000
VICTORIA J. BAILY, 000–00–0000
TODD E. BARNETT, 000–00–0000
SUSAN E. BASSETT, 000–00–0000
DANA B. BATES, 000–00–0000
MARIALOURDES BENCOMO, 000–00–0000
BELLA T. BIAG, 000–00–0000
LEOLYN A. BISCHEL, 000–00–0000
DEBORAH M. BONI, 000–00–0000
REBECCA A. BOSANKO, 000–00–0000
MARGARET A. BROWN, 000–00–0000
MICHAEL C. BROWN, 000–00–0000
JANET D. BRUMLEY, 000–00–0000
JOHN B. BRYANT, 000–00–0000
RICHARD D. BRYANT, 000–00–0000
MARK A. BUETTGENBACH, 000–00–0000
TAMRA S. BUETTGENBACH, 000–00–0000
ANN M. BURNS, 000–00–0000
CHERRI L. CABRERA, 000–00–0000
CARL L. CALIFORNIA, 000–00–0000
THERESA B. CALLOWAY, 000–00–0000
DONNA S. CARNEY, 000–00–0000
LOLA R. B. CASBY, 000–00–0000
FAYE G. CENTENO, 000–00–0000
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JOY A. CHILDRESS, 000–00–0000
LILLY B. CHRISMAN, 000–00–0000
YVONNE J. CLARKE, 000–00–0000
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KIMBERLY G COLTMAN, 000–00–0000
JOHN T. CONNELLY, JR., 000–00–0000
DOUGLAS G. COOK, 000–00–0000
LENORA L. COOK, 000–00–0000
BARBARA M. COPPEDGE, 000–00–0000
NANCY E. COSGROVE, 000–00–0000
ANKA COSIC, 000–00–0000
TERRY L. CUNNINGHAM, 000–00–0000
BARBARA C. CUPIT, 000–00–0000
GLENDA M. CUTHBERT, 000–00–0000
MICHAEL A. DEBROECK, 000–00–0000
ELAINE M. DEKKER, 000–00–0000
MARY M. DELGADO, 000–00–0000
JANE G. DENTON, 000–00–0000
BERNARD L. DICK, 000–00–0000
SARAH E. M. DIECKMAN, 000–00–0000
REBECCA F. DURDEN, 000–00–0000
STEVEN P. EBY, 000–00–0000
LEEANN ELLIOTT, 000–00–0000
BETH A. EWING, 000–00–0000
DIANE E. FARRIS, 000–00–0000
ALICE G. FITZPATRICK, 000–00–0000
LAURIE A. FORD, 000–00–0000
MARY E. FRANTZ, 000–00–0000
SANDRA A. FREDRICKSON, 000–00–0000
KATHLEEN A. FRENCH, 000–00–0000
WILLIAM E. FRITZ II, 000–00–0000
MARIE J. FUENTES, 000–00–0000
NICHOLAS W. GABRIEL, 000–00–0000
BRENDA M. GARZA, 000–00–0000
JEWEL A. GEORGE, 000–00–0000
PATRICK B. GILLEN, 000–00–0000
MARY C. GOETTER, 000–00–0000
JANET K. GORCZYNSKI, 000–00–0000
DARRYL W. GREEN, 000–00–0000
DEBORAH J. GREGGS, 000–00–0000
SANDRA D. HAGEDOWN, 000–00–0000
FRANCES J. HABEL, 000–00–0000
KYNA N. HAGER, 000–00–0000
BELINDA F. HAINES, 000–00–0000
ROBIN G. HAKALA, 000–00–0000
WANDA F. HARRIS, 000–00–0000
LYNN M. HARVEY, 000–00–0000
ROLAND HAWKINS, 000–00–0000
GERARD T. HOGAN, 000–00–0000
KELLY M. HOGUE, 000–00–0000
JOEL B. HOLDBROOKS, 000–00–0000
EVALYN D. HOLDEN, 000–00–0000
RHONDA D. HOLDER, 000–00–0000
KELLY A. HOLIDAY, 000–00–0000
WILSON ETHEL F. HOLT, 000–00–0000
DEBRA A. HOPPE, 000–00–0000
JUDITH L. HORECNY, 000–00–0000
ROBERT E. HORSMANN, 000–00–0000
PENNY J. HOUGHTON, 000–00–0000
ROBERT J. HOUK, 000–00–0000
CHERYL Y. HOWARD, 000–00–0000
WYNONDA J. HUBBARD, 000–00–0000
JANET C. HUDSON, 000–00–0000
DENISE A. HUFF, 000–00–0000
ROBIE V. HUGHES, 000–00–0000
SUSANNE M. HUMPHREYS, 000–00–0000
ROBERT G. HUNT, 000–00–0000
BRIAN S. JOHNSON, 000–00–0000
KEVIN L. JOHNSON, 000–00–0000
ANNA M. JONES, 000–00–0000
PATRICIA J. JONES, 000–00–0000
TERESA L. JONES, 000–00–0000
TRACY J. KAESLIN, 000–00–0000
KIM M. KANE, 000–00–0000
ANTHONY J. KARNAVAS, 000–00–0000
JANETTE L. KARNAVAS, 000–00–0000
ELIZABETH C. KENNA, 000–00–0000
JACK L. KENNEDY, 000–00–0000
DONALD C. KLINE III, 000–00–0000
JOHN KOKENES, 000–00–0000
NANCY M. LACHAPELLE, 000–00–0000
SUZANNE M. LAFOREST, 000–00–0000
LINDA B. LANCASTER, 000–00–0000
CHRISTINE M. LAUGHLIN, 000–00–0000
FELICIA LAUTEN, 000–00–0000
DIANE L, LAYMAN, 000–00–0000
JULIE A. LEAL, 000–00–0000
SUSAN C. LEE, 000–00–0000
PATRICIA C. LEGARTH, 000–00–0000
TUCKER DIANE F. LENT, 000–00–0000
CARON A. LEONWOODS, 000–00–0000
ALFRED M. LIMARY, 000–00–0000
LISA A. LIMARY, 000–00–0000
SINA J. LINMAN, 000–00–0000
JANE K. LOWE, 000–00–0000
VALERIE L. LUSTER, 000–00–0000
BETSY S. MAJMA, 000–00–0000
LYNN M. MALONE, 000–00–0000
ROBERT J. MARKS, 000–00–0000
CYNTHIA A. MARTIN, 000–00–0000
DAN E. MASON, 000–00–0000
RUBEN MATA, 000–00–0000
NERIDA MAUROSA, 000–00–0000
DOUGLAS G. MAUS, 000–00–0000
MONA P. MAYROSE, 000–00–0000
SHERRY A. MC ATEE, 000–00–0000
JOHN F. MC CRORY, 000–00–0000
MARY A. MC CUBBINS, 000–00–0000
TERRY L. MC DANIEL, 000–00–0000
CHARLES M. MC DANNALD III, 000–00–0000
WANDA J. MC FATTER, 000–00–0000
AURA L. MELENDEZ, 000–00–0000
GINGER D. METCALF, 000–00–0000
ALTHEA D. MICHEL, 000–00–0000
EDDIE T. MILLER, 000–00–0000
ROSILAND C. MILLERBALL, 000–00–0000
BILLYE T. MOFFATT, 000–00–0000
LYNNE A. MONSEES, 000–00–0000
PATRICIA R. MOORE, 000–00–0000
ALAN G. MUENCHAU, 000–00–0000
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PATRICIA A. NARAMORE, 000–00–0000
REBECCA M. NELSON, 000–00–0000
MAUREEN A. NESSLER, 000–00–0000
GAIL M. NOBLE, 000–00–0000
WILLIAM A. NOVAK, 000–00–0000
LAWRENCE F. OBRIEN, 000–00–0000
JEFFREY L. OLIVERSON, 000–00–0000
JENNIE C. OLSEN, 000–00–0000
PATRICK R. ONEILL, 000–00–0000
NANCY A. OPHEIM, 000–00–0000
CANDACE G. ORONA, 000–00–0000
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VICKI S. PADGET, 000–00–0000
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LACEY TAMARA E. PASTOR, 000–00–0000
RONNIE M. PATTERSON, 000–00–0000
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LUCI P. PERRI, 000–00–0000
VICTOR P. POLITO, 000–00–0000
KENNETH D. PRINCE, 000–00–0000
BRENDA D. QUARRELS, 000–00–0000
JAMES A. QUIGLEY, 000–00–0000
JAMES E. QUINN, 000–00–0000

VICTORIA S. QUINN, 000–00–0000
RONALD E. REAVES, 000–00–0000
TERESA L. REED, 000–00–0000
ROBERT M. REICHELT, 000–00–0000
JAMES E. REINEKE, 000–00–0000
MARCIA L. RILEY, 000–00–0000
CAROLE S. ROBBINS, 000–00–0000
DAWN ROBBINS, 000–00–0000
CYNTHIA J. ROLEFF, 000–00–0000
DAVID C. ROSSI, 000–00–0000
DENISE M. ROULIER, 000–00–0000
THERESA A. ROWE, 000–00–0000
LAUREN RUNGER, 000–00–0000
JEAN M. SABIDO, 000–00–0000
JOHN A. SADECKI, 000–00–0000
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HOWARD W. SCHACHT, 000–00–0000
KEVIN D. SCHARFF, 000–00–0000
NICOLAUS A. SCHERMER, 000–00–0000
JAMES L. SENN, 000–00–0000
KIMBERLY D. SEUFERT, 000–00–0000
CHERYL L. SHARP, 000–00–0000
CARRIE L. SHARPLES, 000–00–0000
ROBERT G. SHEA, 000–00–0000
LEE A. SHEEHAN, 000–00–0000
CLAIR M. SHEFFIELD, 000–00–0000
WILLIAM L. SHOPP, 000–00–0000
LOUANN SITES, 000–00–0000
ERNESTINE SMITH, 000–00–0000
SUSAN M. SMYKOWSKI, 000–00–0000
IRENE M. SOTO, 000–00–0000
MARIA STANEK, 000–00–0000
DIANA L. STARKEY, 000–00–0000
MICHAEL G. STEPP, 000–00–0000
MARY E. SWEENEY, 000–00–0000
DENISE M. TABARY, 000–00–0000
ANNETTE TARDY, 000–00–0000
DANIEL J. TAYLOR, JR., 000–00–0000
TERRY L. THOMAS, 000–00–0000
MICHAEL E. THOMPSON, 000–00–0000
RICHARD H. THORNELL, 000–00–0000
PATRICIA A. TOLES, 000–00–0000
SUSAN A. TOUPS, 000–00–0000
KAREN L. TOWNSEND, 000–00–0000
CHERYL SCHARNELL TROCK, 000–00–0000
CHRISTINE M. TRUEMAN, 000–00–0000
BARBARA A. TUITELE, 000–00–0000
BARBARA A. TURNER, 000–00–0000
AMY L. VAFLOR, 000–00–0000
KERRY VANORDEN, 000–00–0000
RACHEL VLK, 000–00–0000
KARLA J. VOY, 000–00–0000
DIANE L. WALLINGTON, 000–00–0000
DOROTHY A. WEEKS, 000–00–0000
FREDDIE WHITE, 000–00–0000
MARY M. WHITEHEAD, 000–00–0000
ELIZABETH M. WILCOX, 000–00–0000
LOU A. WILLIAMS, 000–00–0000
NANCY T. WILLIAMS, 000–00–0000
SHERI L. WILLIAMSON, 000–00–0000
WANDA F. WILLIS, 000–00–0000
KIRBY L. WOOTEN III, 000–00–0000
TAMARA YASELSKY, 000–00–0000
CARMEN R. YOUNG, 000–00–0000
RITA R. YOUSEF, 000–00–0000

MEDICAL SERVICE CORPS

REGINA J. ARMENTROUT, 000–00–0000
ALBERT J. BAINGER, 000–00–0000
KYLE A. BAUMAN, 000–00–0000
MARILYN A. BEATTY, 000–00–0000
MONROE A. BRADLEY, 000–00–0000
KEVIN D. BROUSSARD, 000–00–0000
MICHELLE N. CALLISON, 000–00–0000
DANIEL W. CAMPBELL, 000–00–0000
GREGORY D. CARSON, 000–00–0000
MICHAEL W. CASEY, 000–00–0000
JACALYN K. EAGAN, 000–00–0000
MARK A. ELLIS, 000–00–0000
MICHAEL J. ELLIS, 000–00–0000
DANIEL G. FLYNN, 000–00–0000
DONOVAN Q. GONZALES, 000–00–0000
VERA Z. GOROCHOW, 000–00–0000
JOHN R. GREEN, 000–00–0000
KARLAN B. HOGGAN, 000–00–0000
TROY S. HORRISBERGER, 000–00–0000
STACY A. KELLY, 000–00–0000
MARK A. KOPPEN, 000–00–0000
REX A. LANGSTON, 000–00–0000
KATY L. MC CLURE, 000–00–0000
FRANKIE D. MC DANIEL, 000–00–0000
RICHARD A. MC MILLAN, 000–00–0000
DAVID G. MISTRETTA, 000–00–0000
LESLIE K. NESS, 000–00–0000
ALFONSO M. NOYOLA, 000–00–0000
LUANN OLLERT, 000–00–0000
GARY M. ONYETT, 000–00–0000
WILLIAM D. PARKER, 000–00–0000
CRAIG A. PASCOE, 000–00–0000
JOHN M. PATELLA, 000–00–0000
DAVID W. PFAFFENBICHLER, 000–00–0000
KEVIN F. PILLOUD, 000–00–0000
ALEXANDER ROMEYN, 000–00–0000
TERRY L. SANCHEZ, 000–00–0000
SCOTT M. SHIELDS, 000–00–0000
RONALD J. SHOLLEY, 000–00–0000
ROGER G. SPONDIKE, 000–00–0000
RUDY J. STONE, 000–00–0000
RICHARD N. TERRY, 000–00–0000
RICHARD D. THOMAS, 000–00–0000
PORTIA A. T. THOMPSON, 000–00–0000
TIMOTHY VALLADARES, 000–00–0000
MARSHA M. WOODARD, 000–00–0000
JESUS E. ZARATE, 000–00–0000

BIOMEDICAL SCIENCES CORPS

THOMAS A. ANDOLINA, 000–00–0000
HOLLY M. ARVIDSON, 000–00–0000
MONTY R. BAILEY, 000–00–0000
JOHN M. BEERY, 000–00–0000
JOHN E. BELL, 000–00–0000
MICKEY C. BELLEMIN, 000–00–0000
RANDELL E. BLAKE, 000–00–0000
CHARLES H. BLAKESLEE, JR., 000–00–0000
JOANNE BOLLHOFER, 000–00–0000
LINDA L. BONNEL, 000–00–0000
LINDA K. BRANDT, 000–00–0000
LISA A. BRIGHT, 000–00–0000
SCOTT W. BROOKS, 000–00–0000
RUSSELL L. BYRD, 000–00–0000
STEPHEN J. BYRNES, 000–00–0000
JOSEPH D. CALLISTER, 000–00–0000
WALTER E. CALVO, 000–00–0000
DAVID T. CAREY, 000–00–0000
WILLIAM L. CARNES, JR., 000–00–0000
BRIDGET K. CARR, 000–00–0000
MICHAEL E. CHULICK, 000–00–0000
JEFFREY A. CIGRANG, 000–00–0000
RANDALL S. COLLINS, 000–00–0000
NICHOLAS CONSENTINO, 000–00–0000
DANIEL J. CROSSLEY, 000–00–0000
PAUL D. DAVENPORT, 000–00–0000
DEBORAH A. DOWNES, 000–00–0000
DAVID DUQUE, 000–00–0000
SHEREE L. EDKIN, 000–00–0000
NANCY K. FAGAN, 000–00–0000
DENNIS W. FAY, 000–00–0000
TIMOTHY C. FLACH, 000–00–0000
SARAH R. FUTTERMAN, 000–00–0000
GALEN G. GEARHEART, 000–00–0000
MARGARET A. GERNER, 000–00–0000
FRANK J. GODSHALL, 000–00–0000
RAYE A. GRIFFIN, 000–00–0000
BETSAIDA H. GUZMAN, 000–00–0000
SAMUEL D. HALL, III, 000–00–0000
MARGARET C. HAWKINS, 000–00–0000
JIMMY D. HENRY, 000–00–0000
NANCY M. HEWITT, 000–00–0000
ANETTE HIKIDA, 000–00–0000
KURTIS K. HILL, 000–00–0000
LEE C. HINRICHSEN, 000–00–0000
STEVEN R. HINTEN, 000–00–0000
JUDY A. HOUSE, 000–00–0000
HARRY B. JEFFRIES, JR., 000–00–0000
MARCUS A. JIMMERSON, 000–00–0000
JEFFREY A. JOHNSON, 000–00–0000
MONNIE J. JOHNSON, 000–00–0000
RONALD S. JOHNSON, 000–00–0000
MARK A. JURY, 000–00–0000
JOHN D. KESSLER, 000–00–0000
SANDRA A. KNUTSON, 000–00–0000
RONALD L. LAHTI, 000–00–0000
JULIA A. LAULESS, 000–00–0000
CYNTHIA L. LEEZIEGLER, 000–00–0000
VERNON T. LEW, 000–00–0000
JOHN C. LIPSCOMB, 000–00–0000
JENNIFER L. MANN, 000–00–0000
MEGAN MC CORMICK, 000–00–0000
KYMBLE L. MC COY, 000–00–0000
WILLIAM D. MC COY, 000–00–0000
JAMES J. MC DEVITT, 000–00–0000
DAVID J. MC INTYRE, 000–00–0000
SUSAN L. MYERS, 000–00–0000
RONALD T. NOWALK, 000–00–0000
GHITIANA M. OATIS, 000–00–0000
DANIEL R. OLEARY, 000–00–0000
MARK S. OORDT, 000–00–0000
LESLIE L. PAULEY, 000–00–0000
BRIAN J. PFEIFFER, 000–00–0000
RICHARD A. PHINNEY, 000–00–0000
KELLY A. PREDIERI, 000–00–0000
STEVEN P. QUIGLEY, 000–00–0000
MARY L. QUINT, 000–00–0000
JENNY H. RAINWATER, 000–00–0000
SARA M. RAMIREZ, 000–00–0000
DANIEL E. REISER, 000–00–0000
ROBERT A. RELLA, 000–00–0000
DAVID G. RICE, III, 000–00–0000
LONDON S. RICHARD, 000–00–0000
PAUL R. RINEST, 000–00–0000
WILLIAM P. ROACH, 000–00–0000
CHRISTOPHER S. ROBINSON, 000–00–0000
DAWN L. ROCKETT, 000–00–0000
KENNETH R. RUSSELL, JR., 000–00–0000
REBECCA L. SALASGROVES, 000–00–0000
JEFFREY D. SALMAN, 000–00–0000
CONRANDO C. SAMPANG, 000–00–0000
SCOTT E. SANZOTTA, 000–00–0000
DONALD H. SAVAGE, 000–00–0000
LEONARD W. SCHUBRING, 000–00–0000
SCOTT C.G. SHEPARD, 000–00–0000
LEE D. SHIBLEY, 000–00–0000
MICHAEL B. SLACK, 000–00–0000
JAMES B. SNYDER, 000–00–0000
SUSAN E. SNYDER, 000–00–0000
BRIAN K. STANTON, 000–00–0000
HELEN ANN STRACK, 000–00–0000
RONALD R. STUMBO, 000–00–0000
CATHY A. THOMAS, 000–00–0000
GRETCHEN C. TYLER, 000–00–0000
STEPEHN H. VINING, 000–00–0000
JOY E. VROONLAND, 000–00–0000
JOEL W. WASHINGTON, 000–00–0000
PATRICIA K. WELCH, 000–00–0000
JAMES O. WHITE, 000–00–0000
PAUL G. WILSON, 000–00–0000
WILLIAM P. WONDRA, 000–00–0000
WILLIAM D. WOODCOX, 000–00–0000
KAREN C. YAMAGUCHI, 000–00–0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624 OF TITLE 10, UNITED STATES CODE.

To be colonel

ALVIN D. AARON, 000–00–0000
FREDERIC E. ABT, 000–00–0000
ROY H. ADAMS, 000–00–0000
RICHARD J. ADAN, 000–00–0000
GARY R. ADDISON, 000–00–0000
JAMES C. ALLARD, 000–00–0000
JAMES C. ALLEN, 000–00–0000
JOHNNIE L. ALLEN, 000–00–0000
MICHAEL W. ALVIS, 000–00–0000
CHARLES ATKINS, 000–00–0000
LLOYD J. AUSTIN, 000–00–0000
BYRON S. BAGBY, 000–00–0000
MICHAEL J. BAIER, 000–00–0000
ALLEN S. BAKER, 000–00–0000
DANIEL F. BAKER, 000–00–0000
TIMOTHY J. BAKER, 000–00–0000
MICHAEL D. BARGERO, 000–00–0000
BERNARD A. BARNES, 000–00–0000
DANIEL J. BAUR, 000–00–0000
LOIS C. BEARD, 000–00–0000
JAMES W. BERRY, 000–00–0000
BRUCE A. BERWICK, 000–00–0000
MICHAEL A. BINGHAM, 000–00–0000
GEORGE A. BIRDSONG, 000–00–0000
ROY V. BISHOP, 000–00–0000
MERRILL S. BLACKMAN, 000–00–0000
JOHN O. BLAKENEY, 000–00–0000
GARTH T. BLOXHAM, 000–00–0000
LOUIS T. BONHAM, 000–00–0000
TIMOTHY G. BOSSE, 000–00–0000
THOMAS P. BOSTICK, 000–00–0000
JAMES W. BOYLE, 000–00–0000
NEAL H. BRADLEY, 000–00–0000
WILLIAM BRANSFORD, 000–00–0000
LARRY M. BROM, 000–00–0000
DAVID BROWN, JR., 000–00–0000
SUSAN A. BROWNING, 000–00–0000
RANDALL E. BRUCH, 000–00–0000
KONE BRUGH II, 000–00–0000
ALBERT BRYANT, JR., 000–00–0000
MAURICE BUCHANAN, 000–00–0000
HOWARD C. BUTLER, 000–00–0000
REMO BUTLER, 000–00–0000
SEAN J. BYRNE, 000–00–0000
JAMES D. CAMBRON, 000–00–0000
DAVID W. CAMMONS, 000–00–0000
MARY P. CAPIN, 000–00–0000
CHARLES N. CARDINAL, 000–00–0000
WALDO F. CARMONA, 000–00–0000
ALLAN B. CARROLL, 000–00–0000
ROGER L. CARTER, 000–00–0000
ROBERT L. CASLEN, 000–00–0000
DAVID M. CASMUS, 000–00–0000
RANDAL R. CASTRO, 000–00–0000
STEPHEN D. CELLUCCI, 000–00–0000
RANDALL D. CHASE, 000–00–0000
CHARLES D. CHILDERS, 000–00–0000
MICHAEL CHRISTIAN, 000–00–0000
JAMES W. CHURCH, 000–00–0000
ROBERT L. CLARK, 000–00–0000
ROBERT D. CLEMENCE, 000–00–0000
MICHAEL R. CLIFFORD, 000–00–0000
WILLIAM CLINGEMPEEL, 000–00–0000
JAMES A. COGGIN, 000–00–0000
LARRY W. COKER, 000–00–0000
PHILIP D. COKER, 000–00–0000
EDDIE D. COLEMAN, 000–00–0000
GARY S. COLEMAN, 000–00–0000
RUTH B. COLLINS, 000–00–0000
MICHAEL L. COMBEST, 000–00–0000
JOHN R. COMBS, 000–00–0000
HAROLD E. COONEY, 000–00–0000
ANTHONY COROALLES, 000–00–0000
ROBERT W. CRAWFORD, 000–00–0000
GARY G. DACEY, 000–00–0000
TIMOTHY M. DANIEL, 000–00–0000
DONALD P. DAUGHERTY, 000–00–0000
JOHN E. DAVIES, 000–00–0000
DANIEL J. DAVIS, 000–00–0000
ROBERT L. DAVIS, 000–00–0000
RONALD V. DAVIS, 000–00–0000
MARK K. DEAN, 000–00–0000
ROY S. DEFORD, 000–00–0000
JOHN L. DELLAJACONO, 000–00–0000
EMILIO DIGIORGIO, 000–00–0000
MARK W. DILLE, 000–00–0000
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IN THE AIR FORCE

THE FOLLOWING CADETS, UNITED STATES AIR FORCE ACADEMY, FOR APPOINTMENT AS SECOND LIEUTENANTS IN THE REGULAR AIR FORCE, UNDER THE PROVISIONS OF SECTIONS 9353(B) AND 531, TITLE 10, U.S.C., WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

LINE

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ANN E. MACGHEE, 000–00–0000
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