The original documents are located in Box 45, folder "1975/05/19 - President and Secretary Coleman" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

MEETING WITH THE PRESIDENT
and SECRETARY COLEMAN
2:50 p.m. - Monday
May 19, 1975
Oval Office

Foreign
Fiscal
Interdepartmental

THE WHITE HOUSE

WASHINGTON

May 17, 1975

MEETING WITH SECRETARY COLEMAN
Monday, May 19, 1975
2:50 p.m. (5 mins)
The Oval Office

From: Jim Cannon

I. PURPOSE

To greet the Secretary prior to his 3:00 p.m. briefing on the Railroad Revitalization Message.

II. BACKGROUND, PARTICIPANTS, AND PRESS PLAN

A. Background: The Secretary will brief on the message and legislation in the press briefing room after his meeting.

B. Participants: Secretary Coleman
Jim Cannon

C. Press Plan: To be announced.

III. TALKING POINTS

None required.

DRAFT PRESIDENTIAL MESSAGE

ON THE

RAILROAD REVITALIZATION ACT

I am today sending to the Congress the Railroad Revitalization Act. This legislation is the result of several years of study and consultation with industry and Congressional authorities. It builds on the Surface Transportation Act which was overwhelmingly passed by the House of Representatives last December. In view of the prior work in the 93rd Congress and the serious needs of the Nation's railroads, I am confident that the Congress can and will act quickly.

The purpose of this legislation is threefold: (1) To improve the regulations under which the railroads operate and promote economic efficiency and competition, (2) to provide necessary financial assistance to improve and modernize rail facilities, and (3) to encourage rational restructuring of the Nation's railroads and improve their long-term viability. To achieve these objectives, the legislation proposes specific amendments to the Interstate Commerce Act to permit increased pricing flexibility, to expedite ratemaking procedures, to outlaw anticompetitive rate bureau practices and to improve and expedite merger and other restructuring actions. In addition, the bill will make available $2 billion in loan guarantees.

Submission of this bill is part of my Administration's overall program to revitalize our entire free enterprise system. It is the first of several legislative proposals seeking fundamental reform of the regulatory practices which govern the economics of the transportation industry. Such regulation, established long ago, in many instances no longer serves to meet America's transportation or economic needs. Consumers too often bear the costs of inefficient regulation in the form of either inadequate service or excessive cost. Therefore, in addition to this railroad bill, I will soon be submitting proposed legislative reforms for both trucking and airline regulation. Taken together these proposals, when enacted, could save consumers billions of dollars annually and conserve substantial amounts of scarce energy resources.

While I recognize the state of our entire transportation system needs treatment, I am well aware that the Nation's railroads are in a crisis. Large parts of the rail system are in a state of physical deterioration. Some railroads are in bankruptcy and others are on the brink of financial collapse. For this reason, I am sending to the Congress railroad reform proposals first, and I urge action without delay.

The rail problem has been neglected too long and the desperate condition of the industry is indicative of this neglect. We must begin at once a major and massive initiative to restore the vitality of this essential industry. I have established for this Administration a goal that calls for the complete revitalization of the Nation's railroad system so it can serve the needs of modern America. We are moving forward with a program to assure a healthy, progressive rail system. The Railroad Revitalization Act is a critical part of this program. I have directed the Secretary of Transportation to lead this effort and to make its achievement one of his prime concerns.

A major problem faced by the railroad industry is outdated and excessive Federal regulation. Much regulation, originally imposed to prevent monopoly abuses and promote development in the western States, has long since outlived its original purposes. Indeed, Federal regulation has grown so cumbersome that it retards technical innovation, economic growth, and improved consumer services. The legislation I am proposing will improve significantly the regulatory climate in which all railroads operate. Removal of unnecessary and excessive regulatory constraints will enable this low-cost, energy-efficient form of transportation to operate more effectively, to provide better service, and to more fully realize its great potential. The increased efficiencies resulting from these reforms will produce an energy savings on the order of 70,000 barrels of oil per day.

In addition to improving the regulatory environment in which the Nation's rail system functions, this legislation will make available to the rail industry financial assistance which it must have to accomplish necessary modernization of outdated plant and equipment. This assistance will be in the form of $2 billion in long-term loan guarantees so that the Nation's railroads can repair deteriorating roadways and obtain badly needed modern equipment and facilities at reasonable costs. In addition, discriminatory State taxation of the rail industry will be outlawed.

The legislation will also provide special procedures to hasten major restructuring of the rail industry by enabling the Secretary of Transportation, as a condition for granting financial assistance, to require applicants to undertake fundamental restructuring actions. These actions will be governed by expedited merger procedures under which the Secretary and the ICC can facilitate the desired restructuring.

In view of the rail system's role in our Nation's economy, I urge the Congress to give this measure immediate consideration. The importance of regulatory reform to the efficiency of our transportation system cannot be over-emphasized. While special interests may resist these necessary changes, I am confident that the benefits to the American people will be so great and so clear that the Congress will act quickly.

FACT SHEET

THE RAILROAD REVITALIZATION ACT

The President is transmitting to Congress today the Railroad Revitalization Act which will eliminate excessive and antiquated regulatory restrictions, increase competition in the railroad industry, improve customer services, strengthen the ability of the railroads to adjust to changing economic conditions, and provide financial assistance in the form of loan guarantees to help the railroads make needed improvements in their facilities.

This is the first piece of the President's overall program to achieve fundamental reform of transportation regulation. Similar reform measures for truck and airline regulation will follow shortly. Taken together, these proposals, representing the most comprehensive approach to reform in the long history of economic regulation of the transportation industry, will substantially benefit consumers annually and conserve scarce energy resources.

BACKGROUND

This legislation builds on the Transportation Improvement Act which was introduced in the 93rd Congress. Congress also considered the Surface Transportation Act. A modified version of that bill, incorporating many features of the TIA, was passed by the House, but final action was not taken by the Senate. This legislation proposes a number of fundamental changes designed to significantly reduce government intervention in the day-to-day business of the railroads and their customers.

PRINCIPAL OBJECTIVES OF THE LEGISLATION

1. To provide for more efficient, more competitive, and thus less costly rail transportation. This Act will substantially increase reliance on normal competitive market forces to set shipping rates. It is specifically designed to cause a reduction in rates which are too high and are inequitable to shippers and consumers. For the first time, railroads will be able within reasonable limits to adjust rates without ICC interference. In addition, the regulatory decision making process will be simplified, thereby eliminating the high costs involved in lengthy litigation.

2. To increase intermodal competition and encourage a better utilization of resources by assuring that goods are transported by the most efficient means of transportation. The present regulatory process enables the ICC to hold railroad rates at unreasonably high levels in order to protect other modes of transportation from the effects of competition. As a result, traffic which can most economically be moved by rail is often diverted by the rate structure to other forms of transportation. This results in higher shipping costs and consumer prices. By providing for greater pricing flexibility, shippers will be able to take greater advantage of low cost, energy efficient rail transportation. Substantial fuel savings will also result from these reforms.

3. To eliminate certain antitrust immunities which permit carriers to set and hold rates at unreasonably high levels. At present rate bureaus or carrier associations sanctioned by the ICC are permitted to act collectively to establish rates and charges for transportation services. Their actions are now immune from Federal antitrust laws to which nearly every other business in the country is subject. The proposed legislation seeks to prohibit rate bureaus from engaging in certain specified rate making activities which serve to stifle competition and discourage new service innovation. For example, it will prohibit rate bureaus from discussing and agreeing on rates involving only one railroad. The legislation will make anticompetitive rate bureau activities subject to normal antitrust prosecution, while preserving their legitimate service functions.

4. To assure that regulation provides adequate protection to consumer interests. The Administration does not seek to eliminate all regulation. For example, the protection of shippers and carriers from predatory pricing practices is a proper function of government. This legislation carefully preserves regulation which acts to serve the public interest. The user of rail transportation services is assured an appropriate right of redress for what he considers to be an unfair or illegal rate and the legitimate interests of competing carriers are protected as well.

5. To provide needed financial assistance to the railroad industry. An efficient, financially sound rail system is a great national asset. The legislation would provide up to $2 billion in Federal loan guarantee authority to finance improvements in rights of way, terminals, rail plant facilities, and rolling stock. Naturally,

these loans will be subject to specific conditions in order to assure that the capital improvements being financed will contribute to the overall efficiency of railroad operations.

6. To encourage speedy and rational restructuring of the railroads which will improve their economic health. At present, our railroads are in serious need of restructuring. Basically, the problem is one of excess capacity in some areas, including, for example, excessive duplication of parallel mainlines, and inadequate capacity in other areas. This contributes significantly to the uneconomic and inefficient operation of the railroads. In the past, efforts to restructure the system through merger or various cooperative agreements between railroads have been thwarted by cumbersome regulatory procedures.

   This legislation establishes a new procedure which will enable the Secretary of Transportation, as a condition for granting financial assistance, to require applicants to undertake fundamental restructuring actions. This provision will permit the Secretary and the ICC to expedite many merger proceedings and facilitate some of the restructuring necessary to preserve a viable private sector rail industry.

SECTION-BY-SECTION ANALYSIS

1. Railroad Ratemaking and Abandonment. This section more clearly defines the principles of ICC ratemaking powers in terms of particular actions that may or may not be taken. For example, the ICC may not find rates too low if they cover a carrier's costs; the ICC is prohibited from protecting one carrier against competition from a carrier of another mode; the ICC is instructed to consider the effect of rates on transportation efficiency in exercising its decision making authority, etc.

   The RRA also establishes new procedures to ensure adequate prior notice of proposed rail abandonment actions.

2. Anticompetitive Practices of Rate Bureaus. This portion of the bill provides for the removal of antitrust immunities from certain anticompetitive rate bureau practices. Such action will prohibit collusion on rates for single-line freight movements; limit participation in rate actions to those carriers actually involved, and prohibit joint actions to protect or request suspension of rates.

In addition, the bill requires rate bureaus to maintain voting records on each of their members which are open to public inspection, and requires bureaus to act within 120 days on any rule, rate, or charge appearing on its docket.

3. Intrastate Railroad Rate Proceedings. The Act gives the Interstate Commerce Commission authority to determine an intrastate rate which is the counterpart of an already approved interstate rate in the event that the appropriate State agency has failed to take final action on a rate change within 120 days from the time it was filed by a carrier.

4. Suspension of Railroad Rates. One of the basic purposes of the RRA is to provide increased pricing flexibility for the railroads. Section 5 of the Act establishes a phased approach to providing the necessary flexibility and specifically limits ICC suspension powers. It permits railroads to adjust rates up or down without fear of ICC suspension so long as the change is within certain percentage limits: 7 percent in the first year; an additional 12 percent in the second year; and another 15 percent in the third year. Such an approach will result in the creation of a control-free "zone of reasonableness" of approximately 40 percent during a three-year phase-in period. Following the third year, the ICC may not suspend a rate decrease for being too low, so long as a carrier's costs are covered. Similarly, rate increases of 15 percent or less will not be subject to ICC suspension. In cases where the ICC retains the power to suspend rates, they will be required to make findings such as a court does when it issues a temporary restraining order -- that the action will result in immediate and irreparable damages.

   In addition, the bill sets a 7-10 month time period for completion of hearing procedures in rate cases. In cases involving large capital expenditure ($1,000,000 or more), the ICC will be required to act within 180 days after the filing of the notice of a proposed tariff. To encourage investment and provide a period of stability, such rates may not be suspended or set aside for a period of five years.

5. Railroad Revenue Levels. The Act provides that the ICC shall prescribe uniform criteria for determining the financial condition of a railroad, including such things as estimating the rate of return on capital and adequacy of cash flow.

6. Discriminatory Taxation. Section 7 of the RRA adds a new provision to the Interstate Commerce Act prohibiting the levying of discriminatory State or local property taxes on common carriers, thus eliminating excess taxes on railroads of approximately $55 million annually.

7. Uniform Cost and Revenue Accounting. This section requires the ICC and the Department of Transportation to study and recommend uniform cost accounting and revenue accounting methods for rail carriers. Present accounting systems are outmoded and inadequate to resolve the complex cost accounting problems of modern transportation firms.

8. Financial Assistance. The Act authorizes the Secretary of Transportation to issue loan guarantees of up to $2 billion for the purpose of financing improvements in rights of way, terminals, rolling stock, and other operational facilities. These loan guarantees will be based on (a) the contribution the proposed improvement will make to the betterment of our nation's rail system, (b) the ability of the recipient to repay the loan, and (c) the recipient's ongoing program to upgrade his physical plant. As a condition for granting the assistance, the Secretary may require the applicants to undertake specific restructuring actions. This section establishes a new procedure by which the Secretary, the Attorney General, and the ICC can expedite approval of restructuring activities and assure a proper balance between competitive interests and transportation needs.

RAILROAD REVITALIZATION ACT

ANALYSIS OF THE NEED FOR THE BILL

In 1974, the Administration proposed the Transportation Improvement Act of 1974 ("TIA"), which was designed to deal with a number of problems affecting the rail industry. Extensive hearings were held on the TIA and on alternative rail improvement legislation, the Surface Transportation Act ("STA"). The House passed a modified version of the STA which incorporated many of the concepts of the TIA, but the bill did not reach the floor of the Senate. The Railroad Revitalization Act ("RRA") builds upon the experience of the TIA and STA. Like the TIA and STA, the basic thrust of the RRA is three-fold:

1. Improve the regulations under which railroads operate and promote economic efficiency and competition;

2. Provide necessary financial assistance to rationalize and modernize rail facilities; and

3. Encourage restructuring of the nation's rail system to improve its long term viability.

There follows an outline of the major rail industry problems which the bill addresses, along with an analysis of the effect of the bill in redressing these problems.

Improvements in Ratemaking

The current system of rate regulation severely limits an individual railroad's freedom to establish rates and innovative new services. As a consequence, it has created serious rigidity and distortions in railroad service and rate structures. This rigidity has hindered the introduction of new services and prevented railroads from responding effectively to the needs of the changing transportation market. It has also interfered with the establishment of cost-related rates and has prevented railroads from offering shippers the lower rates which would attract them

from relatively less efficient modes. Greater flexibility in ratemaking is essential to allow railroads to attract traffic by offering shippers the opportunity to share in the financial advantages offered by lower rail costs of long-haul main line operations.

Efficient allocation of transportation resources requires that low-cost carriers have wide latitude to set rates to reflect their efficiencies as long as those rates do not fall below variable costs. Available evidence indicates that some railroad rates are far above the fully allocated costs of providing service while others do not even cover their variable costs. This results in some shippers subsidizing other shippers and in misallocation of traffic among competitor modes. Railroads should be able to attract additional traffic by reducing rates on overpriced rail service and removing the subsidy from that traffic which is not paying its way. The time, expense, delay and uncertainty associated with obtaining rate bureau approval and then Interstate Commerce Commission approval to adjust rates have stifled the adjustment process. This has resulted in many railroad rates being held at levels far above the economic cost of providing the service. As a result, it appears that traffic which could be moved most economically by a well-maintained rail system is moving by other modes. This results in higher shipping costs and higher prices to the ultimate consumers.

The basic thrust of the bill is to place greater reliance on competitive forces in ratemaking while preserving the protection for shippers and carriers of appropriate regulatory supervision. Giving greater scope to individual carrier initiative in rate setting will result in improved service, a more economical distribution of traffic among the modes, and a lower and more equitable overall freight bill.

To provide for greater rate flexibility and to expedite the hearing process, the bill would set a definite time limit for completing rate-increase hearings at the ICC, establish a no-suspend zone in which carriers could introduce nondiscriminatory rate changes without fear of Commission suspension, and provide that rates which are compensatory could not be attacked as being too low.

Specifically, the bill would require the Commission to complete its rate hearings and render a final judgment within seven months of the time the rate was scheduled to go into effect. This time limit could be extended an additional three months if the Commission made a written report to Congress explaining the need for the delay. At present, there is no time limit for Commission hearings, and this provision should greatly expedite Commission proceedings.

The bill would also create a no-suspend zone in which increases or decreases could not be suspended pending investigation for being too high or too low, although they still could be suspended for violating sections 2, 3, or 4 of the Interstate Commerce Act, which are the basic sections prohibiting discrimination and prejudice to either an individual shipper or community.

The no-suspend zone would be phased in over a three-year period (up to 7 percent rate increases or decreases in the first year; 12 percent in the second year; 15 percent in the third year; and thereafter 15 percent for increases, with no limit for decreases). This no-suspend zone is a refinement of the approach proposed in the TIA which did not include a provision for phasing. It is similar to, but of longer duration than, the provision in the House-passed STA. The no-suspend zone will allow carriers to respond rapidly to market conditions and will improve the rate decision making process. Today, rate cases are often decided in a world of hypotheticals and "maybe's". Where rate proposals are suspended by the ICC, the hearing on the lawfulness of the rate is without the benefit of real world experience regarding the effect of the rate. The no-suspend provision will change this process, and allow rates within the zone to go into effect prior to hearing, thus providing concrete facts for the decision maker. We note that the Commission in its latest rate case, Ex Parte 313, has agreed not to suspend any of the proposed increase at least until protests can be received and considered. The bill will also provide that the ICC must make findings similar to those required in temporary restraining orders before allowing a suspension.

The present regulatory process has also resulted in the rates of one mode being held high by the ICC to protect another mode, causing a waste of resources, adversely affecting the financial condition of the more efficient mode, and increasing the total cost

to shippers and ultimately to consumers. Section 15(a) of the Interstate Commerce Act was amended by the Congress in 1958 in order to allow carriers greater ratemaking freedom to meet the competition of carriers of other modes. While the amendment was a step in the right direction, the full benefits of greater intermodal competition have not been realized because the amendment has been interpreted by the ICC to allow them to hold the rates of one mode above the rates of another mode to protect that mode. The bill meets this problem by prohibiting the ICC from holding the rates of a carrier of one mode up to a particular level for the purpose of protecting the traffic of a carrier of another mode. The bill also provides that a railroad rate which equals or exceeds variable cost cannot be found to be unjust or unreasonable on the basis that it is too low. This provision will lead to greater flexibility in transportation ratemaking. The net result will be a more efficient transportation system.

Time, expense, delay and uncertainty associated with the regulatory process have also discourages experimentation and impeded the introduction of service innovations. The bill addresses the problem by providing that, where a tariff proposed by a railroad would require a total capital investment of $1 million or more by the carrier or a shipper or receiver, or other interested party, the ICC must determine, within 180 days from the date the carrier files a notice of intention to publish the tariff, whether the proposed tariff would be lawful. This procedure, similar to the one approved by the House in the STA, would also protect those rates from being attacked for a reasonable period of time, thus giving a carrier the certainty necessary to undertake major investments.

Contrary to economic sense, some rates are below costs. It is estimated that about 10 percent of all rail revenue is derived from traffic that does not cover the variable cost of the service. The bill confronts this problem in two ways. First, it would prohibit the Commission upon complaint from approving rate decreases which lower the rate to a noncompensatory level. Second, with respect to existing noncompensatory rates, the bill would prohibit the Commission from disapproving any increase which brings a noncompensatory rate to a compensatory level. These provisions will provide a significant source of additional

revenue to the railroads and ease the burden on those shippers who have been making up the difference. The amounts which must be made up on other traffic is in the hundreds of millions of dollars annually. Correcting this practice will reduce the misallocation and waste of resources both within transportation and in the economy at large.

Restriction of Anticompetitive Practices of Rate Bureaus

To assure that the rate flexibility proposed above is used properly, the RRA proposes significant changes to the provisions in the Interstate Commerce Act pertaining to rate bureaus. Under the present Section 5(a) of the Interstate Commerce Act, the carriers subject to the Commission's jurisdiction are permitted to act collectively and collusively in establishing rates and charges for transportation services. Such concerted action, when taken pursuant to an agreement approved by the Interstate Commerce Commission is immune from the antitrust laws which apply to the mainstream of American business. Rate bureaus or carrier associations have been established pursuant to carrier agreements approved by the ICC. These rate bureaus are the vehicles through which carriers make decisions regarding the rates which the member lines shall charge.

Although rate bureaus provide a number of valuable services to their members and to the shipping public, they also dampen competitive forces in the ratemaking process and discourage pricing flexibility and service innovation. As a consequence, they have interfered with the establishment of rates based on the costs of the most efficient carrier and have provided a mechanism through which carriers seek to and do set and hold rates above a competitive level.

The associations provide a number of administrative services to carrier members, such as arranging for the interchange and facilitation of traffic moving over the lines of two or more carriers, the publication of rates, and the collection of statistics on traffic movements, rates charged, and related costs. The bill would not affect these administrative types of rate bureau activities. Rather, it is addressed only to those activities of the rate bureaus which interfere with efficient allocation of resources.

Some time ago, the Interstate Commerce Commission instituted a general investigation into the activities of rate bureaus in Ex Parte 297, Rate Bureau Investigation. While this proceeding will consider a number of important regulatory issues in connection with the activities of rate bureaus, it is not progressing rapidly. And, of course, the outcome of the proceeding is uncertain at this time. The bill addresses those aspects of rate bureau operations that clearly are in need of change. Therefore, while the Department commends the ICC for instituting this investigation, the proposed legislative action is needed and offers the best prospect for reducing the anticompetitive influence rate bureaus have on ratemaking.

The Department's proposal is designed to improve the ability of carriers to initiate rate changes and respond to competitive forces while enabling the rate bureaus to continue providing constructive administrative services for their members and the shipping public. The bill prohibits railroad rate bureaus from voting on single line movements and limits consideration of joint line rates to those railroads which hold themselves out to participate in the joint movement. The bill also prohibits rail rate bureaus from taking any action to suspend or protest rates. Thus, on single line rates individual railroads will have complete freedom to propose rates based on the cost of the most direct routing, while on joint rates the influence of carriers not participating in the joint movement will be reduced.

The bill also requires all rate bureaus to dispose of proposed rate changes within 120 days from the time they are filed. It requires all rate bureaus to maintain and make available for public inspection the records of the votes of members. These provisions are designed to bring about speedier rate bureau treatment of proposed rate changes and to encourage greater initiative by individual carriers in making rate changes.

While some antitrust immunity is retained for joint rates, the proposed legislative change with respect to single line rate agreements would exert a competitive influence upon joint rates because carrier territories overlap and single line rates are often competitive with joint line rates.

In connection with the rate bureau provisions of the bill, several matters should be made clear. Firstly, rather than indicating all of the many rate bureau activities which might be permitted under a Commission-approved agreement, the thrust of these changes is to indicate those specific rate bureau activities that

cannot be approved by the Commission and which will no longer be immunized from the operation of the antitrust laws. The Commission retains its present authority to review and approve all rate bureau agreements and to impose such additional limitations and conditions on the activities of rate bureaus as it believes are reasonable and necessary.

Secondly, a single line carrier will often be in competition with two or more carriers offering a joint rate and through route. As long as no concerted action is involved, nothing in this proposal would prohibit a single line carrier from individually establishing a rate competitive with a joint rate established through the rate bureau mechanism.

Thirdly, the bill is not intended to preclude discussions or agreements relating to across-the-board percentage changes in freight rates during the first three years after enactment; after that time, they would not be allowed except with respect to general rate increases based on increases in fuel and labor costs.

Finally, the feature of this proposal that prohibits the Commission from approving rate bureau agreements that allow the rate bureau to protest or otherwise seek the suspension of an individual carrier's rate does not preclude one or more carriers from exercising their right of petition under other provisions of the Interstate Commerce Act and it is not meant to repeal the decision of the Supreme Court in Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961). To the extent the antitrust laws are applicable in this area, however, this feature of the bill will permit their operation.

Railroad Abandonment Procedures

Unlike the TIA, the RRA does not propose to change the substantive standard for abandonment. The RRA changes relate primarily to procedure for initiating abandonments. The provisions of the bill dealing with abandonment provide a mechanism for providing adequate prior notice to interested parties of abandonments being considered by the railroads. This assures a more consistent and reasoned evaluation of proposed abandonments by all concerned parties, and allows local communities adequate time to plan and evaluate all alternatives. The section also provides a mechanism through which States and localities can assure continued rail service on lines that are losing money where they are willing to make up the losses.

Intrastate Ratemaking

A significant loss of revenue to the railroad industry has resulted from the failure of State regulatory agencies to act more promptly to adjust intrastate rates in accordance with ICC-approved changes in the level of interstate rates. The bill is designed to correct this problem by transferring to the ICC, exclusive jurisdiction over intrastate rates which are the counterparts to already approved interstate rates whenever State regulatory agencies have not adjusted appropriate intrastate rates promptly.

Intrastate traffic accounts for about 12 percent of the total traffic carried by the railroad industry. The revenue loss to the railroad industry because of State failure to adjust intrastate rates to the level of interstate rates approved in a series of ICC General Increase Proceedings (Ex Parte Nos. 256, 259, 262, 265, 267, 291, 305, and 310) was well over $100 million on a cumulative basis.

By depriving railroads of badly needed revenues, these time lags further weaken the financial condition of the railroad industry. In light of the serious financial difficulties facing the railroad industry today, it is imperative that intrastate ratesbbe adjusted promptly in accordance with changes in the level of interstate rates. In addition, the general public is adversely affected by this regulatory lag because without these needed revenues, the railroads' ability to provide and improve service to both intrastate and interstate shippers is impaired.

Discriminatory State and Local Taxation of Interstate Carriers

Discriminatory taxation of interstate carriers by State and local governments is widespread. As a result of State discriminatory taxation of railroad property, the railroad industry pays approximately $55 million annually in additional taxes. Such discriminatory taxation places an unjust burden upon these carriers and contributes to their financial problems by taxing them at a higher rate than similar property of other businesses in the same taxing jurisdiction. The bill would prohibit discrimination in assessing the property of interstate carriers and in establishing tax rates for such property.

The purpose of the provision is simply to remove an inequitable burden from interstate carriers. Of course, any saving to the railroad and other interstate carriers from elimination of discriminatory taxation will remove a source of revenue from State and local governments. Removing this source of revenue abruptly could have a serious impact upon State and local budgetary planning and result in a substantial hardship. Therefore, the bill provides a three-year moratorium before compliance with its substantive provisions will be required. This period should provide State and local governments ample time to make appropriate plans with respect to the potential revenue losses and temper any adverse financial effects the provision might otherwise have.

Uniform Cost Accounting

The present railroad cost accounting and revenue accounting system employed by the ICC is outmoded and inadequate. The Commission's cost system relies on broad averages rather than specific experience of individual carriers. Moreover, the accounting system from which the cost data are derived is based upon outmoded classifications and specifications that no longer relate to the carrier's actual financial transactions. In addition, the accounting procedures utilized are not adequate to resolve the complex cost accounting problems which characterize modern transportation firms.

For more than a decade the ICC has had pending several proceedings dealing with the issue of developing an improved uniform cost accounting system. Docket 34013, Rules to Govern the Assembling and Presenting of Cost Evidence, and Docket 34013 (Sub-No. 1), Cost Standards in Intermodal Rate Proceedings. The proceeding in Docket 34013 was instituted by an order of the Commission dated April 16, 1962, and the Commission's decision was issued in 1970 (337 ICC 298). In February 1971, the Commission issued a new order reopening the case. In the sub-proceeding, which was initiated in early 1969, the Administrative Law Judge issued an initial decision on May 7, 1973.

The development of improved cost and revenue accounting procedures is absolutely essential to improved regulation of transportation. The bill would give priority and direction to the ICC's efforts and would require the ICC jointly with the Secretary of Transportation to study and recommend uniform cost accounting and revenue accounting methods for rail carriers, and to issue regulations prescribing new uniform cost and revenue accounting methods within

two years from the date of enactment of the bill.

Financial Assistance through Loan Guarantees

An efficient, financially sound rail system is a great national asset. The railroad system in the United States is experiencing severe financial difficulties. Modernization of both the regulatory system and physical plant is essential to the long term viability of the nation's railroads.

The ratemaking and related regulatory improvements proposed in the Department's bill are a vital first step. There remains the task of rationalizing and upgrading the facilities and equipment necessary to provide efficient rail transportation service.

Substantial parts of the rail plant in the United States are in a deteriorating state and the general deterioration of plant and service which is now prevalent in the East and Midwest could spread to other portions of the country.

Because of the industry's low rate of return, railroads are generally unable to generate adequate internal capital to make needed capital improvements. The investment community has been reluctant to provide further external capital because of the limited security that is afforded due to the heavy level of existing liens on rail properties. Marginal railroads can obtain financing for rolling stock but only at high interest rates. The bill would provide up to $2 billion in Federal loan guarantee authority to finance improvements in rail plant facilities, track, terminals, and rolling stock. Loans guaranteed by the Secretary could be financed through the Federal Financing Bank at interest rates below the rates available in the private market. Also, the provision is written in broad terms to allow financing with deferral of interest and principal payments. The conditions precedent to the guarantee would assure that the capital improvement would make a significant contribution

to the overall efficiency of rail operations. Thus, the loan guarantee provisions of the bill are designed to encourage needed long-term restructuring of the existing rail system.

The bill authorizes the Secretary to guarantee railroad loans for plant improvements based on the following criteria:

1. The contribution which the improvement will make to the establishment of a rational, efficient, and economical national railroad transportation system;

2. The ability of the railroad requesting the loan guarantee to repay the loan;

3. The railroads' ongoing programs to upgrade plant facilities.

In connection with loan guarantees for rolling stock, the Secretary is required to consider the present and future need for rolling stock and the protection of the United States afforded by the marketable nature of such stock in the event of default. It further requires him to consider the effect of realizable improvements in freight car utilization.

For any loan guarantee, the bill requires the Secretary to consider among other things the expected return on investment of the proposed improvement, and the potential for intermodal connections and substitutions. These criteria are designed to help achieve through the loan guarantee program the needed modernization of the existing rail system.

The bill would also authorize the Secretary to condition the granting of loan guarantees on an agreement among applicants or other railroads to restructure their facilities. Such restructuring could include merger, consolidation, sale or acquisition of assets, or joint use of facilities. Such agreements would be voluntary and the Secretary could not require a railroad to enter into such an agreement except as a condition for loan guarantee. The essential purpose of this provision is to improve the efficiency of the nation's railroads by eliminating duplicative and excessive facilities.

The Interstate Commerce Commission, in its interpretation of section 5 of the Interstate Commerce Act, has hindered this needed restructuring by failing to reach a decision upon proposed agreements within a reasonable time and by dissipating the benefits of proposed agreements by imposing third-party conditions to such agreements. This bill will remedy these two defects by providing a new hearing procedure and new definition of "public interest" where restructuring accompanies financial assistance. Essentially, the bill calls for a two-part procedure. Agreements will first be considered by the Secretary in a public procedure similar to that used in rulemaking. Notice of the agreement will be given to the public, and comments may be made in writing or in an informal oral hearing. The Secretary may then initially approve the agreement which contains the restructuring terms if it is in the public interest and certify the agreement to the ICC. The ICC will then have 6 months to decide whether the agreement is in the public interest. The "public interest" is defined in the bill to mean that (1) the efficiency gains of the transaction substantially outweigh any adverse effects on competition, and (2) there are no substantially less anticompetitive alternatives to the transaction. Unless the ICC specifically finds, by "clear and convincing evidence," that the proposed agreement is not in the public interest, it must approve the agreement. The Act, in addition to its concern for the preservation of competition, makes specific provision for the rights of labor and shippers. If the ICC should fail to act within the specified time, it must certify the proceeding back to the Secretary, and the Secretary with the concurrence of the Attorney General, must, on the basis of the ICC proceedings and his own information and data, approve, modify, or reject the proposed agreement in accordance with the public interest standard. Both the final decisions of the Secretary and the ICC can be appealed to the United States Court of Appeals for the District of Columbia.

Rolling Stock Scheduling and Control System

One of the basic problems in the railroad industry is the low rate of freight car utilization. An average freight car moves loaded a total of only 25 days and moves empty only 18 days out of a calendar year. Thus, for approximately 322 days in a calendar year, or 88 percent of the time, the average freight car stands idle in railroad yards or at customers' siding. Improving freight car utilization would result in substantial benefits to the railroad industry and the shipping public by reducing the railroad industry's need for capital

expenditures and reducing operating costs. Freight car ownership represents about 25 percent of the railroad industry's net investment. A 20 percent increase in car fleet productivity, for example, would reduce the annual needs of new cars by approximately 10,000 to 15,000 cars. This would enable the railroad to save as much as $300 million in new car purchases annually.

Achieving a more efficient utilization of the car fleet requires a more effective system of car fleet management. Although individual railroads have made some progress in developing better control over their car movements, this Nation still lacks an effective national freight car control system. Such a system has been made possible by recent advances in communications, computer data processing, and applied mathematical analysis. In order to take advantage of these developments and expedite and assure the development of an effective rolling stock scheduling and control system, the bill authorizes the Secretary to conduct research into the design of a national rolling stock scheduling and control system which would be capable of locating and expediting the movement of rolling stock on a national basis.

A BILL

To amend the Interstate Commerce Act, as amended, to modernize and reform the regulation of railroads, to allow more flexibility in establishing rates, to provide adequate prior notice of the abandonment of rail lines, and to assist in the financing of rail transportation, to develop a rolling stock scheduling and control system, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Railroad Revitalization Act".

Railroad Ratemaking and Abandonment

Sec. 2. (a) Section 1 of the Interstate Commerce Act (49 U.S.C. 1) is amended by: (1) deleting the present paragraph (5) and substituting in its place the following:

"(5)(a) As used in this section, the term 'rate' means rate, fare, charge, and any classification, regulation, or practice relating thereto.

"(b) Each rate for a service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable rate is prohibited and declared to be unlawful. A rate that is compensatory may not be found to be unjust or unreasonable on the basis that it is too low.

"(c) In exercising its power to prescribe just and reasonable rates, the Commission shall give due consideration to the effect of rates on the movement of traffic by the carrier for which the rates are prescribed, and to the need in the public interest of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of the service. The Commission may not hold the rate of a carrier of one mode up to a particular level to protect the traffic of a carrier of another mode, if the rate proposed by the carrier is compensatory. Where, after hearing, the Commission finds any rate to be non-compensatory and unlawful, it may order that rate to be increased but by only so much as will make the unlawful rate compensatory.

"(d) A carrier's rate is deemed to be compensatory when it equals or exceeds the carrier's variable cost of providing the specific transportation to which the rate applies. In determining whether a rate on traffic moving over lines receiving an operating subsidy pursuant to paragraph (23) of this section is compensatory, the Commission shall take into account the compensation received from the subsidy.

"(e) In any proceeding instituted upon complaint to determine the lawfulness of a rate, the Commission may not approve a carrier's proposed rate decrease which is below the carrier's variable

cost of providing the specific transportation to which the rate applies, and the Commission may not disallow a carrier's proposed rate increase where the increase does not raise the rate above the carrier's variable cost of providing the specific transportation.

(2) striking paragraph (22) thereof and adding the following new paragraphs:

"(22)(a) In order to provide advance notice to users and State and local governments of those lines of railroad which a carrier may seek to abandon because of their low traffic density, the Secretary, in consultation with the Commission, shall develop and publish, within ninety days after enactment of this paragraph, standards for the classification of railroad lines according to their level of usage and probable economic viability. The Secretary, in consultation with the Commission, may revise the standards thereafter as necessary to improve the accuracy of classification. In determining 'level of usage' and 'probable economic viability' for purposes of classification, the Secretary shall take into account such economic, operational, service, and other factors, as appropriate, and may make allowance for variations in these factors among the various regions of the country and among individual railroads or groups of railroads.

"(b) Within ninety days after publication of the standards for the classification of railroad lines, each railroad shall analyze its rail system in accordance with the standards and prepare and file with the Secretary and the Commission a full and complete schedule of its low density lines. The schedule shall be prepared, filed and kept current in accordance with procedures prescribed by the Secretary, in consultation with the Commission.

"(c) A carrier may initiate an abandonment proceeding by filing a notice with the Commission at least ninety days prior to the proposed date of abandonment of a line of railroad, or the operation thereof, and certifying that the notice has been--

"(1) served by certified mail upon the Governor of each State in which all or any portion of the line of railroad or the operation thereof is proposed to be abandoned;

"(2) served by certified mail on all carriers, shippers and receivers who have used the line in the preceding eighteen months;

"(3) posted in every station on the line of railroad; and

"(4) published for three consecutive weeks in a newspaper of general circulation in each county in or through which said line of railroad operates.

For all abandonment applications filed after one year from the date of enactment of this subparagraph (c), unless at the time the notice of abandonment is filed a line of railroad sought to be abandoned has been listed for at least six months on the schedule prescribed in subparagraph (b) of this paragraph, a carrier may not abandon all or any portion of the line, or operation thereof, if the abandonment is opposed either by a person who has used the service provided thereon or which has operated over such line during the twelve months preceding the date of filing of the abandonment application, or by a State, county, or municipality served by the line.

"(d) Where an application for abandonment of a line of railroad has been considered by the Commission and the Commission determines that public convenience and necessity permits abandonment of the line, upon application by an interested party it shall determine the extent to which the revenue attributable to the line or operations in question of the applicant or applicants covers the cost of operating the line of the applicant or applicants and the amount of subsidy needed to require continued operation under subparagraph (23) of this paragraph.

"(23) If the Commission determines that the public convenience and necessity permit the abandonment of a line of railroad, or operation thereof, the Governor of any State or the authorized representative of any local governing authority in which all or a portion of the line is located, or the shippers or receivers of traffic over the line may, prior to the effective date of the Commission's order, notify the Commission and the railroad of their intention, individually or collectively, to provide an operating subsidy to the railroad to assure a continuation of service. If the Commission determines that the State or local government has, or is likely to acquire within a six-month period, the legal capacity to provide an operating subsidy, or in the case of shippers or receivers, that they are willing and able to provide the subsidy, it may order an additional postponement of the abandonment for not more than six months to implement a subsidization plan. If the Commission determines that the revenues attributable to the line including the subsidy are equal to or exceed the cost of operating the line, it shall order continued operation of the line thereafter on the condition that the subsidy is provided.

"(24)(a) Within ninety days following the date of enactment of this title the Secretary shall, after consultation with the Commission, develop interim standards for determining the 'cost

of operating the line' and the 'revenue attributable to the line' as those terms are used in this section. The Commission shall promptly adopt and promulgate these interim standards. Within one year following the date of enactment of this title, the Secretary shall, after consultation with the Commission, develop final standards for determining these terms. The final standards shall be adopted and promulgated by the Commission within thirty days of their receipt and shall be revised from time to time as the Secretary and the Commission may agree.

"(b) The standards shall be develped in accordance with the following definitions and guidelines"

"(A) the 'cost of operating the line' means all of the applicant's costs (including capital recovery and a reasonable return on investment) which may change or be avoided as a result of a decision to abandon the line, over a period of time long enough to allow all the cost effects of the abandonment to be realized;

"(B) the 'revenue attributable to the line' means all revenues which would be lost for the applicant if the line were abandoned;

"(C) the standards shall not place an unreasonable accounting burden on the railroads; and

"(D) the standards shall permit the separation of cost and revenue between the railroad operating the line to be abandoned and other railroads participating in the traffic originating or terminating on the line.

"(25) If the Commission determines that the public convenience and necessity permit the abandonment of a line of railroad, or operations thereof and if the issuance of the certificate may affect interests of railroad employees, the Commission shall impose a fair and equitable arrangement for the protection of such employees containing benefits no less than those established pursuant to Section 5(2)(f) of this Act.

"(26) The authority of the Commission conferred by subparagraphs (18) through (22) of this section shall not apply to the construction, acquisition, or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general railroad system of transportation.

"(27)(a) Any construction, operation, or abandonment contrary to the provisions of subparagraphs (18), (19), (20), or (22) of this section may be enjoined by any United States district court of competent jurisdiction at the suit of the United States, the

State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who, knowingly authorizes, consents to, or permits any violation of the provisions of subparagraphs (18), (19), (20), or (22) of this section shall be subject to a civil penalty of not more than $5,000 for each violation.

"(b) Applications for abandonment filed with the Commission before the date of enactment of this Act, shall be governed by the provisions of section 1 of the Interstate Commerce Act (49 U.S.C. 1) in effect on the date of the application, except that the issuance of a certificate authorizing abandonment may be stayed pursuant to the provisions of section (23) as enacted in subsection (2) of this section.

Rate Bureau Procedures

Sec. 3. (a) Section 5a of the Interstate Commerce Act (49 U.S.C. 5b) is amended by (1) amending paragraph (3) to read as follows:

"(3) Each conference, bureau, committee, or other organization of railroad carriers established or continued pursuant to an agreement approved by the Commission under the provisions

of this section shall maintain records of the votes of its members on each matter voted on. It shall maintain such other accounts, files, memoranda, or other records, and submit such reports, as the Commission may require. The records of each organization shall be subject to inspection by the Commission and shall be made available to the public through the Commission.";

(2) renumbering paragraphs (7) through (10) as (8) through (11) and adding a new paragraph to read as follows:

"(7)(A) The Commission may not approve under this section any agreement among railroad carriers that (i) permits participation in discussions, agreements or voting on rates, fares, classifications, allowances or charges relating to single-line movements, (ii) permits any carrier not holding itself out to participate in a particular joint line or interline movement to participate in discussions, agreements, or voting on rates, fares, classifications, divisions, allowances, or charges relating to that movement; or (iii) provides for or establishes procedures for joint consideration or other action protesting or otherwise seeking the suspension of any rate, fare, or charge.

"(B) After three years from the date of the enactment of this paragraph, the Commission may not approve under this

section any agreement among railroad carriers that permits participation in discussions, agreements, or voting on rates which are of general applicability to all or substantially all classes of traffic. This paragraph, however, shall not apply to rate changes of general applicability which are based solely on regional or national increases in fuel or labor costs.

(3) striking "(4), (5), or (6)" in paragraph (9) and inserting in lieu thereof "(4), (5), (6), or (7)"; striking "(9)" in paragraph (10) and inserting "(10)" in lieu thereof; and

(4) adding a new paragraph (12) to read as follows:

"(12)(a) A railroad conference, bureau, committee or other organization established or continued pursuant to any agreement approved under this section, shall take final action upon a rule, rate, or charge docketed with it within one hundred and twenty days from the date of docketing."

(b) Any agreement in effect on the date of enactment of this paragraph which permits an action prohibited by section 5a(7)(A) of this Act, and any agreement in effect three years after the date of the enactment of this paragraph which permits an action prohibited by section 5a(7)(B) of this Act is null and void to the extent it permits the prohibited action, and any prohibited action taken under that agreement is subject to the antitrust laws."

Intrastate Railroad Rate Proceedings

Sec. 4. Section 13 of the Interstate Commerce Act (49 U.S.C. 13) is amended by (a) striking the proviso in paragraph 4 and the colon preceding the proviso, (b) inserting a period in place of the colon, and by (c) adding a new paragraph (5) to read as follows:

"(5) The Commission shall have exclusive authority, upon application to it, to determine and prescribe intrastate rates if (i) a carrier has filed with an appropriate administrative or regulatory body of a State a change in an intrastate rate, fare, or charge, or a change in a classification, regulation, or practice that has the effect of changing the rate, fare, or charge, for the purpose of adjusting the rate, fare, or charge to the rate charged on similar traffic moving in interstate or foreign commerce; and (ii) the State administrative or regulatory body has not acted finally within one hundred and twenty days from the date of the filing of the change in the intrastate rates hereunder. Notice of the application to the Commission shall be served on the appropriate State administrative or regulatory body. The Commission shall determine and prescribe the rate thereafter to be charged according to the standards set forth in paragraph (4) of this section. The provisions of this paragraph shall apply notwithstanding the laws or constitution of any State, or the pendency of any proceeding before

any State court or other State authority."

Suspension of Railroad Rates

Sec. 5. (a) Section 15(7) of the Interstate Commerce Act (49 U.S.C. 15(7)) is amended to read as follows:

"(7)(a) Whenever a schedule is filed with the Commission stating a new individual or joint rate, fare, or charge, or a new individual or joint classification, regulation, or practice affecting a rate, fare, or charge, the Commission may order a hearing concerning the lawfulness of the rate, fare, charge, classification, regulation, or practice. The hearing may be ordered upon complaint and, if so ordered, without answer or other formal pleading by the interested carrier or carriers, but with reasonable notice. The hearings must be completed and a final decision rendered by the Commission not later than 7 months after the rate was scheduled to become effective, unless prior to the expiration of such period, the Commission reports in writing to the Congress that it is unable to render a decision within that period, with a full explanation of the reason for the delay. If such a report is made to the Congress, the final decision shall be made not later than 10 months after the rate was scheduled to become effective. If the Commission's final decision is not made within the applicable time period, the rate, fare, charge, classification, regulation, or practice shall go into effect immediately or if it is

already in effect, remain in effect. Therefore such a rate, fare, charge, classification, regulation, or practice may be set aside thereafter by the Commission if upon complaint of an interested party the Commission finds the rate, fare, charge, classification, regulation, or practice to be unlawful. In a proceeding pursuant to the preceding sentence, the burden of proof shall be upon the complainant.

"(7)(b) Pending a hearing instituted upon complaint, the schedule may be suspended for seven months beyond the time when it would otherwise go into effect, or for ten months if the Commission reports to Congress pursuant to paragraph (7)(a), except under the following conditions: (i) in the case of a rate increase, a rate may not be suspended on the ground that it exceeds a just and reasonable level if the rate is within a limit specified in paragraph (7)(c) except that such a rate change may be suspended under sections 2, 3, and 4 of the Act pending the determination of its lawfulness; (ii) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just adn reasonable level if the rate is within a limit specified in paragraph (7)(c) except that such a rate change may be suspended under sections 2, 3, and 4 of the Act pending the

determination of its lawfulness. In addition, the Commission may not suspend a rate under any section of this part unless a complaint is filed, and the complainant establishes and the Commission finds that, without suspension the proposed rate change will cause immediate and irreparable injury to the complainant, that the complainant is likely to prevail on the merits, and that suspension is in the public interest. Nothing contained in this paragraph shall be deemed to establish a presumption that any rate increase or decrease in excess of the limits set forth in paragraph (7)(c) is unlawful or should be suspended.

"(7)(c) The limiations upon the Commission's power to suspend rate changes set forth in paragraph (7)(b)(i) and (ii) apply only to rate changes which are not of general applicability to all or substantially all classes of traffic and only when:

"(i) the rate increase or decrease is filed within one year of the date of enactment of this subparagraph; the carrier notifies the Commission that it wishes to have the rate considered pursuant to this subparagraph; the increase or decrease is not more than 7% of the rate in effect on the date of enactment; and, the aggregate of all increases or decreases in the rate sought pursuant

to this subparagraph do not exceed 7% of the rate in effect on the date of enactment; or

"(ii) the rate increase or decrease is filed within the period commencing one year after the date of enactment of this subparagraph and ending two years after the date of enactment; the carrier notifies the Commission that it wishes to have the rate considered pursuant to this subparagraph; the increase or decrease is not more than 12% of the rate in effect on the last day of the first year following the date of enactment; and, the aggregate of all increases or decreases in the rate sought pursuant to this subparagraph do not exceed 12% of the rate in effect on the last day of the first year following the date of enactment; or

"(iii) the rate increase or decrease is filed within the period commencing two years after the date of enactment of this subparagraph and ending three years after the date of enactment; the carrier notifies the Commission that it wishes to have the rate considered pursuant to this subparagraph; the increase or decrease is not more than 15% of the rate in effect on the last day of the second year following the date of enactment; and, the aggregate of all increases or decreases in the rate under this subparagraph do not exceed 15% of the rate in effect on the last day of the second year following the date of enactment; or

"(iv) the rate increase is filed after three years have elapsed from the date of enactment of this subparagraph; the carrier notifies the Commission that it wishes to have the rate considered pursuant to this subparagraph; and the increase is not more than 15% of the rate in effect on the date of annual anniversary of the enactment of this subparagraph which immediately precedes the filing and the aggregate of all increases sought pursuant to this subparagraph since the date of that anniversary do not exceed 15%; or

"(v) the rate decrease is filed after three years have elapsed from the date of enactment of this subparagraph regardless of the percentage of change.

"(7)(d) If a hearing of a proposed increased rate, fare or charge is initiated and the schedule is not suspended pending hearing, the Commission shall require the carrier to keep an account of all amounts received because of the increase from the date the rate became effective until an order issues, until seven months elapse, or if the hearings are extended pursuant to paragraph (7)(a), until ten months elapse, whichever is sooner. The account shall specify by whom and in whose behalf the amounts are paid. In its final order, the Commission shall require the carrier to refund, with interest at a rate determined by the Commission, but in no event less than the average market yield

on the day of the filing of outstanding marketable securities of the United States with remaining periods of maturity of three months, to the persons in whose behalf the amounts were paid, that portion of the increased rate or change found to be not justified. With respect to any proposed decreased rate or charge which is suspended, if the decrease or any part of it is ultimately found to be lawful, the carrier may refund any part of the portion of the decreased rate found justified provided it makes such a refund available on an equal basis to all shippers who participated in that rate according to the relative amounts of traffic moving at that rate.

"(7)(e) Except as otherwise specifically provided, at any hearing under this subsection, the burden of proof is on the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is compensatory, just and reasonable, and the Commission shall give to the hearing and decision of the question preference over all other questions pending before it and decide the same as speedily as possible.

"(f) Notwithstanding any other provisions of law, a carrier under this part may file with the Commission a notice of

intention to file a schedule stating a new rate, fare, charge, classification, regulation or practice whenever the implementation of the proposed schedule would require a total capital investment of one million dollars ($1,000,000) or more, individually or collectively by the carrier, or a shipper or receiver or agent thereof, or an interested third party. The filing shall be accompanied by a sworn affidavit setting forth in detail the anticipated capital investment upon which it is based. Any interested person may request the Commission to investigate the schedule proposed to be filed and the Commission shall hold a hearing, but the hearing may be informal, and without answer or other formal pleading but with sufficient notice. Unless prior to the one hundred and eightieth day following the filing of the notice the Commission has determined, after hearing, that the proposed schedule, or any part thereof, would be unlawful, the carrier may file the schedule anytime thereafter to become effective after thirty days' notice. The schedule may not, for a period of five years after its effective date, be suspended or set aside as being unlawful under sections 1, 2, 3, or 4 of this Act, except that it may be suspended or set aside after that date if the rate prescribed therein is found to be not compensatory.

(b) The Secretary of Transportation shall, in consultation with the Commission study the effect of the foregoing amendments

to section 15(7) on the development of an efficient railroad system. The study shall include an analysis of the effects of the provisions upon shippers and upon carriers of all modes and include proposals for further regulatory and legislative changes if necessary. The Commission shall gather all data relating to the study as requested by the Secretary, and make such data available to the Secretary. The Secretary shall transmit results of such study to Congress within 30 months after the enactment of these amendments.

Railroad Revenue Levels

Sec. 6. Section 15a of the Interstate Commerce Act (49 U.S.C. 15a) is amended to read as follows:

"Sec. 15a. In carrying out its responsibilities under this part, the Commission shall give due consideration to the need for revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide adequate and efficient railway transportation service. In determining the adequacy of revenues, the Commission shall prescribe uniform methods and criteria for estimating the rate of return based on costs of capital and risk, the cost impact of changes in the general level of prices and wages, and the adequacy of cash flow."

Prohibiting Discriminatory Taxation

Section 7. Sections 26 and 27 of the Interstate Commerce Act (49 U.S.C. 27) are redesignated as sections 27 and 28 and a new section 26 is added to read as follows:

"Sec. 26. (1) As used in this section--

"(a) The term 'assessment jurisdiction' means a geographical area, such as a State or a county, city or township within a State, which is a unit for purposes of determining assessed value of property for ad valorem taxation.

"(b) The term 'transportation property' means transportation property, as defined in the regulations of the Interstate Commerce Commission, that is owned or used by any common or contract carrier subject to economic regulation under parts I, II, III, or IV of this Act or by The National Railroad Passenger Corporation.

"(c) The term 'commercial and industrial property' means property devoted to a commercial or industrial use, but does not include transportation property or land used primarily for agricultural purposes or primarily for the purpose of growing timber.

"(d) The term 'all other property' means all property, real or personal, other than transportation property or land used primarily for agricultural purposes or primarily for the purpose of growing timber.

"(2) Notwithstanding the provisions of section 202(b) of this Act, the following actions by any State, or subdivision or agency thereof, whether taken pursuant to a constitutional provision, statute, administrative order or practice, or otherwise, constitute an unreasonable and unjust discrimination against, and an undue burden upon interstate commerce and are prohibited:

"(a) the assessment, for purposes of a property tax levied by any taxing district, of transportation property at a value which, as a ratio of the true market value of the property, is higher than the ratio of assessed value to true market value of all other industrial and commercial property which is in the assessment jurisdiction in which is included the taxing district, and which is subject to a property tax levy;

"(b) the collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to all other commercial and industrial property in the taxing district;

"(c) the collection of any tax on the portion of an assessment which is prohibited; and

"(d) the imposition of any other tax which results in discriminatory treatment of a carrier subject to the Interstate Commerce Act.

"(3) If the ratio of assessed value to true market value of all other commercial and industrial property in the assessment jurisdiction cannot be established through the random-sampling method known as a 'sales assessment ratio study', conducted in accordance with statistical principles applicable to that study, then the following actions are also prohibited:

"(a) the assessment of transportation property at a value which, as a ratio of the true market value of the property, is higher than the ratio of assessed value to true market value of all other property which is in the assessment jurisdiction in which is included the taxing district, and which is subject to a property tax levy; or

"(b) the collection of an ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to all other property in the taxing district.

"(4) Notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction to issue such writs of injunction or other property process, mandatory or

otherwise, as may be necessary to restrain any State, or subdivision or agency thereof, or any persons from violating the prohibitions of this section, except that relief may not be granted hereunder unless the assessed value as a percentage of true value of the transportation property exceeds by at least 5 per centum the assessed value as a percentage of true value of other commercial and industrial property or all other property, as the case may be, in the assessment jurisdiction. The jurisdiction of the district courts shall not be exclusive of that which any Federal or State court may otherwise have.

"(5) This section shall not become effective until three years after the date of its enactment.

Uniform Cost and Revenue Accounting

Sec. 8. The Commission shall, jointly with the Secretary of Transportation, study and recommend uniform cost accounting and uniform revenue accounting methods for rail carriers. Within two years from the effective date of this section, the Commission shall issue regulations prescribing the recommended uniform cost accounting and uniform revenue accounting methods. In their study and recommendations, the Commission and the Secretary shall give due consideration to all items and factors (including the cost of capital) presently used in the ascertainment of costs for ratemaking purposes which they deem relevant to the determination of variable

cost; and they shall consult with and solicit the views of other agencies and departments of the Federal Government, and the representatives of the carriers, their employees, shippers, and the public.

Railroad Loan Guarantees

Sec. 9(a) For the purposes of sections 9 and 10, "Secretary" means the Secretary of Transportation except where otherwise specifically provided. The Secretary is authorized, on such terms and conditions as he may prescribe, and with the approval of the Secretary of the Treasury, to guarantee any lender timely payment of principal and interest on securities, obligations or loans, including refinancings thereof, issued for the purpose of financing acquisitions or improvements specified in subsection (d) of this section. The maturity date of any security, obligation, or loan, including all extensions and renewals thereof, shall not be later than 30 years from its date of issuance, nor be later than the end of the useful life of any asset to be financed by the security, obligation, or loan. The Secretary may prescribe and collect a reasonable annual guarantee fee and such additional fees as may be required in his judgment to cover expenses under the program authorized by this section.

(b) All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the Government of the United States of America.

(c) Any guarantee made by the Secretary under this section shall not be terminated, cancelled or otherwise revoked; shall be conclusive evidence that such guarantee complies fully with the provisions of this section and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee; and shall be valid and incontestable in the hands of a holder of a guaranteed security, obligation, or loan, except for fraud or material misrepresentation on the part of such holder.

(d) The loan guarantees authorized by subsection (a) of this section may be made for the purpose of financing the acquisition, construction, maintenance, or development of the following facilities and equipment used in the rendering of rail transportation services:

(i) track, roadbed and related structures subject to projected traffic usage of at least 5 million gross ton-miles per mile of road per year;

(ii) electrical, communication, and power transmission systems;

(iii) signals;

(iv) terminal facility modernization and consolidation;

(v) new and rebuilt rolling stock and trailers and containers for carriage on flat cars (TOFC); and

(vi) computer based information or data systems.

(e)(1) Before making any guarantee pursuant to this section, the Secretary must consider whether the prospective lender is responsible and whether adequate provision will be made for servicing the obligation. The Secretary may not make a guarantee pursuant to this section unless the borrower has an equity interest in the asset to be financed. The Secretary may not make a guarantee for purposes (i) through (iv) of subsection (d) unless he finds that--

(i) the management of the railroad is actively pursuing necessary programs designed to upgrade and develop plant facilities and operations as necessary to fulfill its obligations as a common carrier;

(ii) the prospective earning power of the borrower together with the character and value of the security pledged, furnish reasonable assurance that the borrower will be able to repay the loan within the time fixed and afford reasonable protection to the United States in the event of a default;

(iii) the activity to be financed under the guarantee will enhance the efficiency of rail operations;

(iv) the prospective borrower has demonstrated to the satisfaction of the Secretary that credit is not otherwise available on reasonable terms;

(v) the interest rate on the obligation to be guaranteed is a reasonable rate, taking into consideration the range of interest rates prevailing in the private market for similar obligations, and the risks assumed by the Federal government; and

(vi) there has been provided for the protection of the interests of railroad employees which may be affected thereby, a fair and equitable arrangement containing benefits no less than those required by and established pursuant to Section 5(2)(f) of the Interstate Commerce Act.

(2) The Secretary may not make a guarantee for the purpose of improving track or terminal facilities unless he also finds that the proposed improvements will contribute to the establishment of a rational, efficient, and economical national rail transportation system.

(3) The Secretary may not make a guarantee (a) for the purpose of the acquisition or rebuilding of rolling stock and TOFC unless he finds that --

(i) the acquisition or rebuilding is justified by the present and future need for rolling stock; and

(ii) the probable value of the rolling stock or TOFC will provide reasonable protection to the United States in the event of a default;

(b) for the purpose of the acquisition of an information or data system unless he finds that the proposed acquisition of the information or data system is consistent with the purposes of section 11 of this Act.

(4) In making a guarantee for any of the purposes specified in subsection (d), the Secretary shall also take into account, the return on investment of the improvement for which a guarantee is sought, the potential for intermodal connections and substitutions and for improved utilization of freight cars, the relationship of the proposed improvement to other improvement plans of the borrower, the contribution of the improvement to improved rail transportation service both for passengers and for shippers, and the contribution of the improvement to the efficiency of the borrower.

(f) The Secretary may prescribe, as he deems necessary and appropriate, rules and regulations for the administration of this section.

(g) In order to reduce the cost of borrowing under this section and to assure that the borrowings are financed in a manner least disruptive of private financial markets and institutions, the Secretary may enter into agreements with the Federal Financing Bank under which the Federal Financing Bank may purchase obligations issued by the borrower and guaranteed by the Secretary.

(h) There is hereby created within the Treasury a separate fund (hereafter in this section called "the fund") which shall be available to the Secretary without fiscal year limitation as a revolving fund for the purpose of this section. The total of any guarantees made from the fund in any fiscal year shall not exceed limitations specified in appropriations Acts. A business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by law (sections 102, 103, and 104 of the Government Corporation Control Act (31 U.S.C. 847-849) for wholly-owned Government corporations.

(i)(1) There are authorized to be appropriated to the fund from time to time such amounts as may be necessary to provide capital for the fund. All amounts received by the Secretary as payments, fees, and any other moneys, property, or assets derived by him from his operations in connection with this section shall be deposited in the fund.

(2) All guarantees, expenses, and payments pursuant to operations of the Secretary under this section shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Secretary shall pay from the fund into Treasury as miscellaneous receipts interest on the cumulative amount of appropriations available as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury. However, such rate shall not be less than a rate determined by taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of loans guaranteed from the fund. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest. If at any time the Secretary

determines that moneys in the fund exceed the present and any reasonably prospective future requirements of the funds, such excess may be transferred to the general fund of the Treasury.

(j) If at any time the moneys available in the fund are insufficient to enable the Secretary to discharge his responsibilities under guarantees under this section, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Secretary from appropriations or other moneys available under subsection (i) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes or obligations.

The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(k) The aggregate unpaid principal amount of securities, obligations, or loans outstanding at any one time, which are guaranteed by the Secretary under this section, may not exceed $2,000,000,000.

(l) The Secretary may not pursuant to this section guarantee any security, obligation, or loan, if the income from such security, obligation, or loan is excluded from gross income for the purposes of chapter I of the Internal Revenue Code of 1954.

Railroad Restructuring

Sec. 10.

(a) FINDINGS.--The Congress finds and declares that--

(1) Efficient railroads are essential to the commerce and defense of the country.

(2) Preservation of a viable private sector rail industry is in the national interest.

(3) Existing rail facilities in the United States, including main line track and branch line track, are excessive in relation to long run demand for rail services.

(4) This excess capacity impairs the efficiency and economic health of the rail industry.

(5) The time, expense and delay associated with proceedings under the Interstate Commerce Act for consideration of proposals for consolidation and joint use of facilities has been an obstacle to removing excess and duplicative rail plant capacity.

(6) A vital need exists to reduce this country's rail plant to the level necessary to meet the public's long term demand for rail services.

(7) A clear need exists to expedite the consideration of proposals which have the effect of eliminating excess or duplicative facilities.

(8) Preservation of an effective level of competition in transportation is essential to shippers and is in the national interest.

(b) PURPOSES.--It is therefore declared to be the purpose of Congress in this Act to provide for--

(1) An efficient, economical, viable private sector rail system.

(2) Greater efficiency of the rail system through rationalization of facilities which are excessive in relation to long run demand for rail services.

(3) Prompt and fair consideration of voluntary agreements to achieve those objectives.

(4) The maintenance of an effective level of competition in transportation.

(5) Federal financial assistance to the railroad industry where necessary capital cannot be obtained from private sources on reasonable terms.

(c) As a condition for receiving financial assistance pursuant to this Act, the Secretary may require an applicant to enter into an agreement with another applicant or with another railroad with respect to merger, consolidation, control, joint use of tracks, terminals, or other facilities, or the acquisition or sale of assets. This section does not confer authority upon the Secretary to require non-applicants to enter into an agreement with an applicant.

(d) Within 90 days of the date of enactment of this Act, the Secretary shall publish regulations in accordance with 5 U.S.C. 553 prescribing the procedures for applying for Federal assistance under this Act and the information and data which must be submitted by each applicant.

(e) If the Secretary determines to condition the granting of financial assistance pursuant to section (c), the Secretary shall provide reasonable notice in the Federal Register of the application and the proposed agreement. The Secretary shall also provide written notice to the Attorney General of the United States and to each Governor of a state in which any railroad whose property is involved in the proposed agreement operates. The Secretary shall provide an opportunity to any interested person to submit written comments and shall provide an opportunity for an informal oral hearing regarding the proposed agreement. Within 15 days of the Secretary's final date for receiving the comments of interested persons, the Attorney General shall review the proposed agreement and the comments filed and shall advise the Secretary in writing of his views on its competitive effects.

(f) The Secretary shall review the written and oral comments. He shall then give notice in the Federal Register of any changes in the proposed agreement which he has made after review of the comments and shall provide an opportunity to the public to comment on the changes.

(g) The Secretary and the Commission shall administer the provisions of this Act in light of its declaration and purposes and the Secretary may modify any proposed transaction to make it conform to said declaration of purpose. The Secretary and the Commission shall consider whether a proposed transaction is in the public interest. An agreement is in the public interest if (i) the efficiency gains substantially outweigh any adverse effects on competition; and (ii) there is no clear and substantially less anti-competitive alternative available to the proposed transaction for achieving the efficiency gains and other public benefits. In determining whether a proposed agreement is in the public interest, the Secretary and the Commission shall, among other things, consider the long-run or short-run nature of any adverse effects or efficiency gains and shall weigh such effects or gains accordingly. Where the Secretary approves a transaction hereunder which would eliminate substantial competition for shippers, then the

Secretary shall take necessary steps to minimize the loss of competition to affected shippers; to accomplish this, the Secretary may, among other things, require that access be granted on reasonable terms to one or more other carriers over the tracks and terminals subject to the transaction, either by the grant of trackage and terminal rights, or by the establishment of joint rates and through routes, or both. The purpose of this subsection is to improve the efficiency of the national transportation system while assuring adequate levels of competition. This section is intended to protect the vitality of competition, not individual competitors as such. The Secretary may, from time to time, for good cause shown, impose such supplemental conditions as are necessary to protect competitive conditions for shippers but shall not impose any conditions to protect competitors as such.

(h) After completing the procedures called for in the preceding paragraphs, and within 90 days of the filing of the completed application, the Secretary shall make a determination whether the proposed agreement is in the public interest and consistent with this Act. If the Secretary makes an affirmative determination, he shall so certify his findings, the basis therefor, and the proposed agreement in writing to the Interstate Commerce Commission. The Secretary shall provide labor protection at least equal to the protection afforded by section 5(2)(f) of the Interstate Commerce Act.

(i) If the Secretary so certifies in accordance with subsection (h), the Interstate Commerce Commission shall consider the Secretary's findings and the agreement pursuant to section 5(2) of the Interstate Commerce Act, except as hereafter provided. The Commission must complete any hearings it deems necessary within 120 days of the receipt of the certification and must render a final decision within 180 days of the receipt of the certification, unless the Secretary provides in the certification for longer time periods. Any hearings deemed necessary shall be held directly before a panel of the Commissioners of the Interstate Commerce Commission. Notwithstanding the provisions of section 5(2), and the panel shall, without rendering an initial decision, certify the record to the full Commission for decision. The Commission shall not disapprove or modify an agreement in any way unless the Commission finds there is clear and convincing evidence the agreement is not in the public interest as defined in subsection (g). The protestants to such an agreement shall have the burden to prove that such a certified agreement is not in the public interest. The Commission's decision shall be subject to review as provided in 28 U.S.C. 2321, as amended, except, that petitions for

review may be filed only in the United States Court of Appeals for the District of Columbia. Such proceedings shall be given priority over other pending matters and expedited to the maximum extent permitted by the Court's docket.

(j) If the Commission shall fail to render a decision under this Act within the required time period, the Commission shall certify to the Secretary the proceedings before the Commission within 3 days of the end of its period for decision. The Secretary shall review the record and all other material and information he deems relevant; and, with the concurrence of the Attorney General on issues relating to competition, he may disapprove, modify, or approve the proposed agreement in accordance with the public interest as defined herein. Agreements approved by the Secretary pursuant to this Subsection (j) shall be deemed final, and of the same force and effect as if approved by the Commission pursuant to section 5 of the Interstate Commerce Act. The Secretary may from time to time, for good cause, make supplemental orders as he may deem necessary or appropriate. Final decisions of the Secretary pursuant to this subsection

shall be subject to review under the procedures of 28 U.S.C. 2321 as amended, provided, that petitions for review may be filed only in the United States Court of Appeals for the District of Columbia. Such proceedings shall be given priority over other pending matters and expedited to the maximum extent permitted by the Court's docket.

(k) Agreements approved pursuant to this section shall not be subject to the operation of the antitrust laws.

National Rolling Stock Management Information System

Sec. 11. (a) The Secretary is authorized to conduct research and development in order to promote a national rolling stock management information system which, utilizing advanced computer and communication techniques, would be capable of expediting the movement of rolling stock on a national basis. In conjunction with this task, the Secretary shall study, in cooperation with the Interstate Commerce Commission and the railroads the information, functions, and procedures necessary to provide efficient and expeditious rail freight service on a national basis. Within 2 years from the date of enactment of this section, the Secretary shall report to the Congress his recommendations respecting the organization, development, funding, and implementation of any such system. In arriving at his recommendations, the Secretary shall consider:

(1) the need for timely and accurate information which leads to improvements in the movement and utilization of rolling stock on a nationwide basis, and the efficient interchange of traffic between carriers at the gateway terminals;

(2) the requirements and technological standards necessary to assure that the advantages to be obtained from a system accrue to the nation's railroads;

(3) the requirements and technological standards necessary to assure the improved movement and utilization of cars;

(4) the uniform data and other technological requirements that must be contained in the rolling stock management information systems of an individual railroad to permit efficient linkage of its system with a national system; and

(5) the economic, safety, and service benefits to be derived from implementing improved car management procedures.

(b) The Secretary shall conduct a study respecting (1) the costs to individual railroads of installing compatible rolling stock management information systems, and (2) the economic, safety, and service benefits to be derived from compatible systems. Not later than 2 years from the date of enactment of this section, the

Secretary shall announce his recommendations for the installation of the system by individual railroads. The Secretary is authorized to provide technical assistance to railroads in the implementation of rolling stock management information systems designed in a manner consistent with his recommendations.

(c) The Interstate Commerce Commission, the Association of American Railroads, and all railroads are required to furnish to the Secretary such information as he may require in order to carry out the provisions of this section.

National Transportation Policy

Sec. 12. The National Transportation Policy (49 U.S.C., preceding sections 1, 301, 901 and 1001) is amended by:

(a) adding the word "innovative," in the second clause of the first sentence after the word "promote";

(b) adding a new clause after the second clause of the first sentence as follows:

"to promote competition between and among the various modes of transportation by water, highway, and rail;" and

(c) adding a new sentence after the first sentence as follows:

"The Commission in making any decision under this Act shall recognize the value of competition in developing, coordinating and preserving an efficient and economically-sound national transportation system and shall assure that where a particular action would substantially lessen competition, there is no less anticompetitive alternative which realizes the efficiency or transportation needs as effectively."

Section-by-Section Analysis of a Bill

To amend the Interstate Commerce Act, as amended, to modernize and reform the regulation of railroads, to allow more flexibility in establishing rates, to provide adequate prior notice of the abandonment of rail lines, and to assist in the financing of rail transportation and to develop a rolling stock scheduling and control system, and for other purposes.

Sec. 1. Cites the proposed Act as the "Railroad Revitalization Act".

Railroad Ratemaking and Abandonment

Sec. 2(a)(1). Amends section 1(5) of the Act by (i) incorporating the definition of "rates" and, with some modification, certain ratemaking considerations now appearing in Section 15a(1) of the Act; (ii) adding to the existing requirement that rates be just and reasonable a provision that a compensatory rate may not be held to be unjust or unreasonable because it is too low; (iii) incorporating provisions from subsections 15a(2) and (3) requiring the Commission to consider the effects of rates on the movement of traffic and the need for adequate and efficient railway transportation service, and prohibiting the Commission from holding up to a particular level the rate of a carrier or freight forwarder subject to the Act to protect the traffic of a carrier of another mode; (iv) providing that a carrier's rate is compensatory when it equals or exceeds the particular carrier's variable cost of providing the specific transportation to which the

rate applies; and (v) prohibiting rate decreases below variable cost, and prohibiting the Commission from disallowing a carrier's rate increases where the increase does not increase that rate beyond the carrier's variable cost.

(5). Strikes the existing paragraph (22) of section 1 of the Act (paragraph 22 is restated in paragraph 26) and adds paragraphs (22) through (26) establishing new rail abandonment procedures to ensure adequate prior notice of rail abandonments, as follows:

(22)(a). Within 90 days after enactment of the bill, the Secretary of Transportation (hereafter "the Secretary"), in consultation with the Commission, must develop and publish standards for the classification of low density railroad lines according to their level of usage and probable economic viability.

(22)(b). Within 90 days of the publication, each railroad must submit to the Secretary and the Commission a schedule of low density lines, as determined by applying the classification standards.

(22)(c). A carrier may initiate an abandonment proceeding by filing a notice with the Commission at least 90 days prior to the proposed date of abandonment. Unless a line has been listed for at least 6 months on the schedule required by subparagraph (b), it may not be abandoned if it is opposed by a user or State or local government served by the line.

(22)(d). If the Commission permits abandonment of a line, it must calculate the difference between the "revenue attributable to the line" and the "cost of operating the line".

(23). If a State or local agency or shipper notifies the Commission of its intention to provide an operating subsidy and the Commission determines that the State or local government has or will acquire within six months the legal capacity to provide the subsidy or that the shipper is willing and able to provide the subsidy, it may order an additional postponement for not more than six months to implement a subsidization plan. If the Commission determines that the revenues for the line, including the subsidy, are at least equal to the cost of operating the line, the Commission must order continued operation of the line.

(24). The Secretary and the Commission are required to develop within 90 days following the date of enactment of the bill interim standards for determing the "cost of operating the line" and "revenue attributable to the line". Such standards must recognize that "cost" means all costs, including capital recovery and a reasonable return on investment, which would change if the line were abandoned, and "revenue" means all revenue which

would be lost if the line were abandoned. The interim standards must be adopted by the Commission and within one year the Secretary, in consultation with the Commission, must develop final standards for determining these terms and those standards must be adopted by the Commission.

(25). Provides that if the Commission permits abandonment, it shall impose labor protection at least equal to the 4 year protection provided in section 5(2)(f) of the Interstate Commerce Act.

Rate Bureau Procedures

Sec. 3(a). Amends section 5a of the Act by:

(1). Amending paragraph (3) to require that all rate bureaus maintain records of the votes of their members on each matter voted on, and that the records of all rate bureaus be available to public inspection through the Commission.

(2). Renumbering the existing paragraphs (7) through (10) as (8) through (11) and adding a new paragraph (7)(A) prohibiting agreements among railroad carriers that (i) permit discussions, agreements or voting on a single-line movement; (ii) permit carriers that do not hold themselves out to participate in a joint movement to participate in the consideration of rates related to the movement;

or (iii) permit joint consideration or action protesting or seeking to suspend rates. As used in paragraph (7), a "movement" is the transport of a commodity between any two points for which a tariff has been filed. Paragraph 7(B) precludes discussions, agreements, and votes relating to across-the-board percentage changes in freight rates three years after the enactment of this Act except for general rate increases based solely on increases in fuel or labor costs.

(3). Making a conforming amendment to paragraph (9).

(4). Requiring every rate bureau to take final action within 120 days on any rule, rate, or charge docketed with it.

(b) Invalidates all agreements to the extent they permit actions prohibited by the new paragraph (7).

Intrastate Railroad Rate Proceedings

Sec. 4. Amends section 13 of the Act by adding a new paragraph (5) vesting the Commission with exclusive authority to determine and prescribe an intrastate rate which is a counterpart to an approved intrastate rate if a carrier has filed with the appropriate State agency a change in an intrastate rate, and the State agency has not finally acted on the rate change within 120 days from the filing of the rate.

Suspension of Railroad Rates

Sec. 5. Amends section 15(7) of the Act to provide that:

(1) The Commission may initiate hearings with respect to new rates upon complaint or upon its own initiative and after hearing issue an appropriate order. Hearings must be completed within 7 months of the date the rate was scheduled to become effective, unless the Commission reports to the Congress the reason it is not possible to comply with this requirement. If a report is made the Commission must still complete the hearing within 10 months of the date the rate was scheduled to go into effect. If the hearing is not completed, the rate goes into effect. That rate may be later contested, but the burden of proof shifts to the complainant. This section, therefore, preserves the existing burden of proof presently provided in the Interstate Commerce Act.

(2) This section institutes a 4-year phasing to allow for more rate flexibility and limits the Commission's suspension power. A rate may still be suspended for 7 months (or for 10 months if the report to Congress is made) but a rate may not be suspended on the ground that it exceeds a just and reasonable level or that it is below a just and reasonable level if the rate increase or decrease is within certain percentage limits. 7% for the first year; 12% for the second year; and 15% for the

third year. After the end of the third year, rate decreases may not be suspended for being unreasonably low and rate increases may not be suspended if not more than 15%. The percentage limits are yearly aggregates. This limitation upon the Commission's suspension power does not apply to general rate increases or to challenges to the increase or decrease under sections 2, 3, and 4 of the Act, but in order to suspend under these sections or any other section the Commission must make findings similar to those a court would have to make to issue a temporary restraining order. It should also be noted that the limitations upon the Commission's suspension power does not affect the Commission's power to make a final determination.

(3) If the hearing involves a proposed rate increase and the rate is not suspended pending hearing, the Commission must require the carrier to keep an account of all amounts it receives because of the increase, from the date the rate became effective until an order is issued, until seven months elapse (or ten months if the hearing is extended) whichever is sooner. Interest must be paid by the carrier at a rate determined by the Commission, but in no event may the interest rate be lower than the rate on three month government securities.

(4) This section provides a special procedure for the initial consideration and subsequent consideration of tariffs requiring large capital expenditures. A carrier is authorized to file a notice of intention to file a tariff when the implementation of the tariff would require a total capital investment of $1,000,000 or more by the carrier, or a shipper or receiver, or other interested party, individually or collectively. The filing must be accompanied by a sworn affidavit as to the investment required. An interested person may request a hearing, and the Commission must hold a hearing, but it can be an informal hearing. Unless the Commission determines within 180 days from the date of filing that the proposed tariff would be unlawful, the carrier may file the tariff anytime thereafter and it may not be suspended or set aside as being unlawful under parts 1, 2, 3, or 4 of the Act, but it may be set aside if found to be noncompensatory.

(5) After two and half years after the initiation of the no-suspend zone, the Secretary of Transportation, in consultation with the Commission is to make a report to Congress, indicating the effects of the rate flexibility introduced by this Act upon the efficiency of the national transportation system.

Railroad Revenue Levels

Sec. 6. Amends section 15a of the Act by repealing all of its provisions and re-enacting certain of them in the new section 15a and others in section 1(5) of the Act (section 2 of the bill). Also provides that the Commission, in determining adequacy of revenue, shall prescribe uniform criteria for estimating the rate of return on capital, cost impact of changes in the general level of prices, and adequacy of cash flow.

Prohibiting Discriminatory Taxation

Sec. 7. Adds a new section 26 to the Act prohibiting the levying of discriminatory State or local property taxes on common carriers subject to regulation by the Commission.

Uniform Cost and Revenue Accounting

Sec. 8. Requires the Commission, jointly with the Secretary, to study and recommend uniform cost accounting and revenue accounting methods for rail carriers. The Commission would be required to issue regulations prescribing the uniform cost and revenue accounting methods within two years from the date of enactment of the bill.

Railroad Loan Guarantees

Sec. 9. Authorizes the Secretary to guarantee any lender against the loss of principal and interest on securities, obligations, or loans issued for the purpose of financing the acquisition, construction, maintenance, or development of:

(i) track and roadbed subject to projected traffic usage of at least 5 million gross ton-miles per mile of road per year;

(ii) electrical, communication, and power transmission systems;

(iii) signals;

(iv) terminal facility modernization and consolidation;

(v) new and rebuilt rolling stock; and

(vi) computer based data and information system.

Prior to making a guarantee the Secretary must make several findings which are designed to assure adequate protection to the U.S. in the event of default, and to assure that the improvements will contribute to a more rational, efficient, and economical rail transportation system. In addition, the Secretary must make a

finding that adequate labor protection, of at least 4 years, has been provided. Different findings must be made with respect to guarantees for rolling stock. Loan guaranteed by the Secretary pursuant to Act may be financed through the Federal Financing Bank. The guaranteed amounts outstanding at any one time may not exceed $2,000,000,000.

Railroad Restructuring

Sec. 10. This section would authorize the Secretary to condition the granting of loan guarantees on an agreement among the applicants or other railroads to restructure their facilities. Such restructuring could include merger, consolidation, sale or acquisition of assets, and joint use of facilities. Such agreements would be voluntary, and the Secretary could not require a railroad to enter into such an agreement except as a condition for loan guarantee.

These agreements would be approved in a new two part procedure with a new "public interest test". The ICC in its interpretation of Section 5 of the IC Act has hindered needed restructuring of the railroads by failing to reach a decision within a reasonable time and by dissipating the benefits of proposed agreements by imposing unnecessary third party conditions to such agreements. This section will remedy these two defects by requiring a new procedure for consideration of proposed agreements and new definition

of "public interest." Agreements will first be considered by the Secretary in a public procedure similar to that used in rule making. Notice of the agreement will be given to the public, and comments may be made in writing or in an informal oral hearing. The Secretary will then initially approve the agreement which contains the restructuring terms if it is in the public interest and certify the agreement to the ICC. The ICC will then have 6 months to decide whether the agreement is in the public interest. The "public interest" is defined in the bill to mean that (1) the efficiency gains of the transaction substantially outweigh any adverse effects on competition, and (2) there is no clear and substantially less anti-competitive transaction available. Unless the ICC specifically finds, by "clear and convincing evidence," that the proposed agreement is not in the public interest, it must approve the agreement. The Act, in addition to its concern for the preservation of competition, makes specific provision for the rights of labor and shippers. If the ICC should fail to act within the specified time, it must certify the proceeding back to the Secretary, and the Secretary, with the concurrence of the Attorney General, must, on the basis of the ICC proceedings and his own information and data, approve, modify, or reject the proposed agreement in accordance with the public interest standard. Both the final decisions of the Secretary and the ICC can be appealed to the United States Court of Appeals for the District of Columbia.

Rolling Stock Scheduling and Control System

Sec. 11. Authorizes the Secretary to promote the development of the design of a national rolling stock scheduling and control system, and requires the Secretary to develop recommendations for implementing a system. The Secretary is also required to study, and develop recommendations for participation by individual railroads in a national system.

National Transportation Policy

Sec. 12. Amends the National Transportation Policy which precedes the various parts of the Interstate Commerce Act to recognize the importance of competition.