To amend the Interstate Commerce Act, as amended, to increase efficiency and competition and to reduce costs in the motor carrier industry by allowing easier entry and greater price flexibility and by removing excessive and wasteful regulation, 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 "Motor Carrier Reform Act".

FINDINGS AND PURPOSE

Sec. 1. (a). Findings -- The Congress finds and declares that --

(1) An efficient and safe motor carrier system is essential to the commerce and defense of this country.

(2) The present regulation of motor carriers frustrates innovation, impedes competition, and impairs the efficiency and health of the motor carrier industry, especially the common carrier system upon which the small and rural shipper is uniquely dependent.

(3) A clear need exists to reform the present regulatory system.

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

(1) An efficient, economical, and low-cost private sector motor carrier industry including a revitalized common carrier system to serve better the needs of the Nation's shippers both small and large, rural and urban, consumers, and the traveling public.

(2) Increased reliance upon competitive forces in the development and maintenance of the motor carrier industry.

(3) A regulatory system that will serve not just the needs of the motor carrier industry but of the Nation as a whole.

(4) A more flexible pricing system.

(5) Entry into the industry that is significantly easier than at present and without the expenses and delays associated with the present procedures.

(6) Removal of arbitrary restrictions upon private and contract carriers.

(7) Reduction in fuel use.

(8) More even-handed and effective safety regulation.

(9) Create a climate in which well-managed carriers can earn a fair return.

Rate Bureaus

Sec. 2. (a) Unless otherwise specifically indicated, whenever in this Act an amendment is expressed in terms of an amendment to a section, the reference shall be considered to be made to a section of the Interstate Commerce Act.

(b) Section 5(a) is amended (1) by adding the following paragraph:

"(11)(A) The Commission may not approve under this section any agreement among carriers subject to Part II that (i) permits participation in discussions, agreements or voting on rates, fares, classifications, divisions, allowances or charges relating to a single-line movement, (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 enactment of this paragraph, the Commission may not approve under this section any agreement among carriers subject to Part II that permits participation in discussions, agreements, or voting on any rate, fare, classification, allowance, or charge of any kind, including those of general applicability, except those relating to joint or interline movements as permitted in paragraph A above.

(2) striking "(4), (5), or (6)" in paragraph (9) and inserting in lieu thereof "(4), (5), (6), or (11)"; and

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

"(12)(a) A conference, bureau, committee, or other organization of carriers subject to Part II established or continued pursuant to any agreement approved under this section shall take final action upon any matter lawfully docketed with it within 120 days from the date of docketing.

"(b) Such conference, bureau, committee, or other organization shall maintain records of the individual votes of its members on each matter voted on. It shall maintain and furnish to the Commission such other accounts, files, memoranda, records and reports, as the Commission may require. The records referred to in the first sentence of this paragraph shall be made available to the public through the Commission.

"(c) Any agreement in effect on the date of enactment of this paragraph which permits an action prohibited by section 5a(11)(A) of this Act, or any agreement in effect three years after the date of enactment of this paragraph which permits an action prohibited by section 5a(11)(B) 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."

Aircraft Exemption

Sec. 3. (a) Section 203(b)(7a) is amended by deleting the words, "the transportation of persons or property by motor vehicle when incidental to transportation by aircraft" and inserting the following in substitution:

> "the transportation by motor vehicle in a radius of 100 miles or less of an airport of persons or property from or to a carrier subject to regulation under the Federal Aviation Act of 1958 as part of a continuous movement under a through-ticket or through-air bill of lading, covering in addition to the line-haul movement by air, the collection, delivery, or transfer service performed by a motor carrier."

(b) Section 403(a) of the Federal Aviation Act of 1958 is amended by inserting the following words immediately prior to the period in the first sentence:

> "provided such service is performed within a radius of 100 miles or less of the airport".

Private and Contract Carriers

Sec. 4. (a) Section 203(a)(1) is amended by adding the following sentence: "For the purpose of sections 203(a)(17) and 203(c), a group of corporations consisting of a parent corporation and all subsidiary corporations in which the parent controls, directly or through another subsidiary, more than 50 percent of the voting stock shall be considered a single person.")

(b) Section 203(a)(14) is amended by inserting after "except" the following: "transportation referred to in clause (b) of paragraph (17) or".

(b) Section 203(a) is amended by striking paragraph (15) and inserting the following in substitution:

"The term 'contract carrier by motor vehicle' means any person who engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) of this subsection and the exception therein under continuing contracts with one or more persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed

to meet the distinct need of each individual customer. In its administration of this section, the Commission may not require that a person establish compliance with both clauses (a) and (b) of this paragraph. Nothing in this Act shall be construed to require any contract carrier to limit its operations to carriage for a particular industry or within a particular geographic area, to require a contract carrier to enter into contracts only with the owner of the goods to be shipped, or to require divisions, subsidiaries or the like, of a single corporate or business entity to be considered as separate persons rather than treating the entity as one person.

(c) Section 209 is amended by striking all of subsection (b) up to the first proviso and inserting the following in substitution:

"(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulation, require. Subject to section 210, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant

is fit, willing, and able properly to perform the service for which he applied, that he conforms to the definition of a contract carrier by motor vehicle according to section 203(a)(15), and that he will conform to the provisions of this chapter and the lawful requirements, rules and regulations of the Commission thereunder. Otherwise such application shall be denied. In considering the issuance of a permit the Commission may not consider the effect which granting the permit will have upon the protesting carriers or the number of persons served or to be served by the applicant, except insofar as the number of persons served or to be served may be relevant in determining whether the proposed service meets distinct needs of persons pursuant to section 203(a)(15)(b), provided that for this purpose any group or association of shippers exempt from Part IV pursuant to clause 1 of section 402(c) shall be considered a single person. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with

respect to the operation of such carrier the requirements established by the Commission under section 204(a)(2) and (6)".

Commercial Zones

Sec. 5. Section 203 is amended by adding a new subsection (d) as follows:

"(d) The Commission in consultation with the Secretary shall take all necessary steps to reform its regulations relating to commercial zones, as referred to in section 203(b)(8), to ensure that the boundaries of such zones are consistent with present economic realities, add to the efficiency of transport, and reduce unnecessary transport, accident exposure, fuel consumption, air pollution, noise, and transport costs. In reforming such regulations, the Commission shall use the Standard Metropolitan Statistical Areas or analogous geographic boundaries where appropriate. The Commission shall also develop new procedures for expediting the time required for the Commission's consideration of changes to commercial zone boundaries. In carrying out these responsibilities the Commission and the Secretary may require any person engaged in the transportation of property by motor vehicle in

interstate or foreign commerce to furnish such data, information, and reports as the Commission or the Secretary deem appropriate for the purposes of this reform. Such reform shall be completed, and a written report of the reform shall be made to the Congress within two years of the enactment of this subsection."

New Plant

Sec. 6. (a). Section 203(c) is amended by removing the last period and adding the following after the last reference to the word "person":

"or unless such transportation is to or from a new plant. For the purposes of this section a plant shall be considered 'new' for a period of 5 years from the date the plant was established provided the plant did not replace an existing plant at that point.

(b) Section 203 is amended by adding a new subsection (d) to read as follows:

"(d) If any person was in operation over any route or within any territory, in the transportation of property for compensation by motor vehicle in interstate or foreign commerce and was serving a new plant, as provided in section 203(c), for a period of at least two years, and has so operated since that time (or if engaged in furnishing seasonal service only, was serving the new plant during the appropriate seasons in a two-year period, and has so operated since that time), the Commission shall without further proceedings issue such person a certificate or permit to serve that plant as the type of operation may warrant."

Private Carrier - Leases to Common Carriers

Sec. 7. Section 204(f)(1) is amended by deleting the following: "and is used regularly in the transportation of property of a character embraced within section 203(b)(6) or perishable products manufactured from perishable property of a character embraced within section 203(b)(6), ".

Entry

Sec. 8. (a) Section 207 is amended by:

(1) adding the following sentence to subsection (a): "In its determination of whether the proposed service is or will be required by the present or future public convenience and necessity, the Commission shall accord substantial weight in favor of the application where it finds that such service would be reasonably likely to: (i) lower the applicant's operating costs; or (ii) improve the applicant's equipment utilization or fuel efficiency; or (iii) improve the applicant's service, by, among other things, producing shorter transit time or avoiding interchanges; or (iv) meet user or consumer preference for service, rates, or combinations thereof not available from other carriers; or (v) generally improve the competitive climate in the area for which the additional service is proposed."

(2) relettering subsection (b) as subsection (j); and

(3) adding the following subsections:

"(b) Notwithstanding subsection (a) of this section, unless a qualified protestant proves to the Commission that the proposed service would be in violation of the second sentence of section 216(d), the Commission shall issue an applicant a certificate for the service the applicant proposes if the Commission finds that (i) the applicant is fit, willing, and able to perform the service proposed and to

conform to the provisions of this part and the regulations issued thereunder, and (ii) the proposed service is reasonably likely to provide sufficient revenues to the applicant to cover the applicant's actual costs of providing the specific transportation. The provisions of this subsection do not apply to a private carrier applying for a certificate to operate as a common carrier by motor vehicle if by approval of such application the carrier would become both a private and common carrier by motor vehicle.

"(c) For the purposes of this section actual costs shall be deemed to include only those costs of the applicant which are directly associated with the particular service.

"(d) In its determination pursuant to subsection (b) the Commission may not: (i) consider the possible effect on the applicant's projected revenues or traffic of anticipated price or service responses of competitors to the applicant's proposed service; or (ii) require or rely upon any system-wide or industry-wide cost, utilization, or revenue information as any part of its determination of actual costs or revenue, but the Commission shall consider the foregoing information if and only to the extent the applicant expressly raises any such issues. In no event in its consideration of applications made under subsection (b) may the Commission consider the adequacy of existing service or the effects of the proposed service on competitors.

"(e) The Commission may require as a condition of granting the certificate that the rate for the service approved pursuant to subsection (b) be put into effect for a period of up to one year, except in response to a rate decrease initiated by a competitor after application is made pursuant to subsection (b), the carrier may lower the rate to meet the competitive rate but only to the level of that competitive rate.

"(f) Within 180 days of the enactment of this subsection, the Secretary, after consultation with the Commission, shall by rulemaking promulgate methods of calculating actual costs (including the measurement of a reasonable return on investment where appropriate) and reasonably anticipated revenues of applicants consistent with subsection (c). The methods as finally adopted by the Secretary shall be published in the Federal Register and shall be binding upon the Commission in its determination pursuant to this section. The methods may thereafter be revised at the discretion of the Secretary by rulemaking. Methods promulgated by the Secretary pursuant to this subsection, shall be subject to review: Provided, the scope of the review shall be limited to those matters referred to in 5 U.S.C. 706(2)(A)-(D), petitions for review must be filed within 60 days of the final promulgation of

the standard, and petitions for review may only be filed in the United States Court of Appeals for the District of Columbia. Such proceedings shall be the exclusive and sole remedy for review, and such proceedings shall be given priority over other pending matters and expedited to the maximum extent permitted by the Court's docket. The review of the methods of calculation promulgated by the Secretary or the failure of the Secretary to promulgate such shall not stay the effectiveness of any part of this section.

"(g) If an applicant is issued a certificate pursuant to subsection (b) or (h), the applicant's rate authorized pursuant to subsections (b) or (h) may not be suspended or set aside as being unlawful for a period of two years from the effective date of the rate.

"(h) With respect to any application filed under subsection (b) within eighteen months of the enactment of this subsection, the consideration of any such application shall be completed and a decision rendered within one year of the filing of the application. With respect to any application filed thereafter, the consideration of such application must be completed and a decision rendered within 90 days of the filing of such application. If the decision is not rendered within the applicable time period, the application shall be deemed granted and the Commission shall issue the certificate without further consideration as requested.

"(i) If protest is made against an application made pursuant to this section, and if the certificate or permit is granted notwithstanding that protest or any subsequent appeals by any protestant, the protestant shall pay to the applicant the reasonable costs of defending against such protest and subsequent appeals if the Commission determines the protest was frivolous and unreasonable."

(b) Immediately upon enactment of this section, the Secretary of Transportation, in cooperation with the Commission and the Attorney General, shall commence a study of the amendments in this act to determine their effectiveness in meeting the purposes of this act, and in particular, of providing greater price flexibility, easier entry, broadening the range of service and price options, and, in general, in improving the quality of motor carrier transportation. In this study, the Secretary shall propose any legislative changes needed to further liberalize entry and pricing flexibility so as to obtain the full benefits of a competitive trucking industry. This study shall be completed and submitted to the Congress, together with findings and legislative recommendations, by the end of the third year following enactment of this section.

Dual Operations

Sec. 9. Section 210 is amended by adding the following proviso at the end of that section:

": Provided, this section shall not apply where the carrier establishes that its charges to the shipper or shippers in question are equal to or in excess of its variable cost of providing the specific transportation service covered by the permit."

Suspension of Common Carrier Motor Rates

Sec. 10. Section 216(g) is amended to read as follows:

"(g)(1) For the purpose of this subsection and subsection (k), the term rate means a rate, fare, charge, or classification, or any regulation or practice affecting the foregoing. Whenever a schedule is filed with the Commission stating a new individual or joint rate for the transportation of passengers or property by a common carrier by motor vehicle, or by any such carrier in conjunction with a common carrier by railroad or by express or by water or interstate or foreign commerce, the Commission may order a hearing concerning the lawfulness of the rate. The hearing may be ordered only upon complaint and, if the Commission so orders, without answer or other formal pleading by the interested carrier or carriers, but with reasonable notice. Whenever a hearing is ordered by the Commission pursuant to this paragraph, the final decision shall be made by the Commission not later than 7 months after the rate has become effective without suspension, or, if suspension is ordered, not later than 7 months after the date the rate was originally 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 has become effective without suspension, or, if suspension has been ordered, not later than 10 months after the time the rate was originally scheduled to become effective. If the Commission's final decision is not made within the applicable time periods prescribed herein, the rate shall go into effect immediately or if it is in effect remain in effect: Provided, such a rate may be set aside thereafter by the Commission if upon complaint of an interested party the Commission finds the rate to be unlawful. In a proceeding pursuant to the proviso in the preceding sentence, the burden of proof shall be on the complainant.

"(2) 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 (1), except under the following conditions: (A) 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 (3) except that such a rate change may be suspended under subsection (c) and the second sentence of subsection (d) of this section pending the determination of its lawfulness; (B) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just and reasonable level if the rate is within a limit specified in paragraph (3) except that such a rate change may be suspended under subsection (c) and the second sentence of subsection (d) of this section 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 (3) is unlawful or should be suspended.

"(3) The limitations upon the Commission's power to suspend rate changes set forth in paragraph (2)(A) and (B) apply only to rate changes which are not of general applicability and only when:

"(A) 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 of this subparagraph; 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

"(B) 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 of this

subparagraph; 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

"(C) 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 of this subparagraph; 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

"(D) 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

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

"(4)(A) If a hearing of a proposed increased rate 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 or, until seven months elapse, or if the hearings are extended pursuant to paragraph (1) until ten months elapse, whichever is sooner. The account shall specify by whom and in whose behalf the amounts are paid. Except with respect to common carriers by motor vehicle of passengers, 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 found to be not justified. With respect to common carriers by motor vehicle of passengers, the Commission shall require the carrier to reduce its future fares by such an amount

as would return to the traveling public that portion of the increased rate found to be not justified, with interest calculated as in the preceding sentence. Such reduction in fares shall be done in an equitable manner.

(B) With respect to any proposed decreased rate of a common carrier by motor vehicle of property 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 proposed decreased rate found justified provided he makes such a refund available on an equal basis to all shippers who participated in that rate. 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 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."

Common Carrier Compensatory Rates

Sec. 11. Section 216 is amended by adding a new subsection (k) as follows:

"(k) A rate that is compensatory may not be found to be unjust or unreasonable on the basis that it is too low. A common 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 it applies. In any proceeding instituted upon complaint to determine the lawfulness of a rate, the Commission may not approve a common carrier's rate decrease which decreases the rate below the carrier's variable cost of providing the specific transportation to which the rate applies, and the Commission may not disallow a common carrier's rate increase which increases the rate to a level equal to or below the common carrier's variable cost."

Contract Carrier Compensatory Rates

Sec. 12. (a). Section 218 is amended by adding the following new subsection:

"(d) A rate that is compensatory may not be found unreasonable on the basis that it is too low. A contract 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 it applies. In any proceeding instituted upon complaint to determine the reasonableness of a rate, the Commission may not approve a contract carrier's rate which decreases the rate below the carrier's variable cost of providing the specific transportation to which the rate applies."

Commodity and Route Restrictions

Sec. 13. (a) Congress hereby finds that the Commission in its administration of Part II of the Interstate Commerce Act has imposed restrictions in certificates it has granted that artifically and arbitrarily restrict the types of commodities that carriers may transport and also that require carriers to follow unnecessarily circuitous routes. These restrictions have resulted in an inefficient use of the nation's motor transportation resources and in a waste of fuel.

(b) To provide a more efficient motor transportation system, the Commission shall take all necessary steps to broaden significantly the categories of commodities that may be carried by individual common carriers by motor vehicles of freight and to remove all restrictions requiring wasteful circuitous routes of such carriers. Within one year from the date of enactment of this section, the Commission shall report in writing to the Congress the steps it has taken pursuant to this section. Included in the actions that the Commission shall take are the following:

(i) where any carrier subject to Part II has been providing a significant amount of transportation between any two points via a required gateway or

indirect route for six months or more, the Commission shall, upon application of the carrier, revise the carrier's authority to allow the carrier to provide transportation between the two points directly, or without need to proceed through the gateway.

(ii) The Commission shall by regulation issued within 90 days of enactment of this section authorize all carriers subject to Part II, whether irregular or regular to deviate from their authorized routes to provide more direct service if the total distance traveled from initial point of origin to final point of destination is not less than 75 percent of the distance over the carrier's authorized service. Thereafter, the Commission shall study increasing the allowed deviation and reducing the minimum travel requirement below 75 percent, and shall issue regulations accordingly.

Discrimination

Sec. 14. Section 216(d) is amended by adding the following sentences:

"No carrier subject to Parts 1, 2, 3, and 4, of the Act may assert the second sentence of this subsection as the basis for the protest of any rate of any motor carrier. No shipper may assert the second sentence of this subsection of the Act as the basis of the protest of any rate of any motor carrier unless the rate being protested applies directly to a commodity being transported for the protesting shipper by the motor carrier whose rates are being protested.

Back Hauls

Sec. 15. Section 203(b) is amended by striking the last period, and adding the following paragraph:

"; or (11) transportation by motor vehicle in interstate or foreign commerce for compensation by any person owning or leasing three or fewer trucks, if such transportation is (A) subsequent to a movement of property whose transportation is exempt pursuant to paragraph 6 of this subsection, (B) in a single movement or in one or more of a series of movements in the general direction of the general area in which such motor vehicle is based or in the general direction of the general area of the origin from which the preceding exempt movement was made, and (C) at a rate, fare, or charge at least equal to the lowest rate, fare, or charge for that same transportation filed and put into effect by any certificated common carrier, except that the revenue in any year derived from such transportation for that year may not exceed 100 percent of such person's revenue derived from the transportation of property exempt under paragraph (b) of this subsection for that same

year. For the purposes of this paragraph, a person shall be deemed to own or lease any trucks or to receive revenue of any person controlling, controlled by, or under common control, or related to such person, as those terms of control and relationship are defined by the Commission."

State Filing Requirements

Sec. 16. Congress hereby declares and finds that the individual State regulations and requirements imposed upon interstate motor carriers regarding licensing, registration and filings are in many instances confusing, lacking in uniformity, unnecessarily duplicative and burdensome and that it is in the national interest to minimize the burdens of such regulations while at the same time preserving the legitimate interests of the States in such regulation. Therefore, the Congress directs the Secretary of Transportation, in consultation with the States and the various State agencies which administer such requirements and regulations and with the motor carrier industry, including both the regulated and unregulated segments, to develop legislative or other recommendations to provide a more efficient and equitable system of State regulations for interstate motor carriers. Such recommendations shall be made to the Congress no later than eighteen months after the enactment of this section.

Motor Carrier Safety

SEC. 17. (a) Section 204(a)(3) is amended by removing the words "of property" wherever they may be found and by striking the words "and (g)" and inserting "(g), and (h)" in substitution;

(b) Section 212(a) is amended by inserting in the first sentence immediately after the word "provided" the following: "or as provided pursuant to section 222";

(c) Section 222(a) is amended by inserting "(1)" after "(a)" and by adding a new paragraph as follows:

"(2). Any person who knowingly commits an act in violation of any requirement, rule, regulation, or order promulgated by the Secretary of Transportation under section 204 of this part relating to qualifications and maximum hours of service of employees and safety of operation and equipment shall be fined not more than $1,000 for the first offense and not more than $2,000 for any subsequent offense.

(d) Section 222(h) is amended (i) by inserting in the first sentence after "thereof," the following: "who fails to follow any requirement, rule, or regulation of the Secretary promulgated

pursuant to section 204 of this part," and (ii) by striking "$500" and "$250" and inserting "$1,000" and "$500" in substitution;

(e) Section 222 is further amended by adding a new subsection to read as follows:

"(i) In administering the functions, powers, and duties transferred by section 6(e) of the Department of Transportation Act, the Secretary may, after notice and hearing pursuant to 5 U.S.C. § 554, remove or suspend the certificate of a common carrier, remove or suspend the permit of a contract carrier, or order a private carrier to cease or suspend operations as a private carrier, if he determines that such carrier has failed to comply with regulations issued by the Secretary pursuant to this part, 18 U.S.C. 831 et seq., or The Hazardous Materials Transportation Act and that such carrier's continued operation as a motor carrier poses an unreasonable hazard to the public safety. In addition, the Secretary may, after notice and informal hearing, prohibit a motor carrier from operating pursuant to the exemption in 203(b)11 if such carrier has failed to comply with regulations

issued by the Secretary pursuant to this part, 18 U.S.C. 831 et seq., or The Hazardous Materials Transportation Act and if such carrier's operations pose an unreasonable hazard to the public safety."

Mergers

Sec. 18. (a) Effective one year from the date of enactment of this Act, section 5(13) is amended by deleting the words, "and a motor carrier subject to part II."

(b) Effective one year from the date of enactment of this Act, Section 11 of the Act of October 15, 1914, as amended, known as the Clayton Act (15 U.S.C. § 21) is amended by inserting after the words "as amended" and before the first semi-colon in the first sentence the following:

"Provided, however, That the Interstate Commerce Commission shall not have jurisdiction to enforce the compliance of motor carriers subject to Part II of the Interstate Commerce Act, as amended, with sections 18 and 19 of this title".

(c) Effective one year from the date of enactment of this Act, Section 7 of the Act of October 15, 1914, as amended, known as the Clayton Act (15 U.S.C. § 18) is amended: (1) by deleting the words "the laws to regulate commerce" from the second line of the fourth full paragraph, and substituting therefor the words "Part I of the Interstate Commerce Act, as amended"; and (2) by adding the word "such" after the word "other" and before the words "common carrier" in the fifth line from the bottom of the fourth full paragraph.

(d) Effective one year from the date of enactment of this Act, Part II of the Interstate Act is amended by adding the following as section 229:

"Sec. 229. No acquisition by a motor carrier of the whole or any part of the stock, share capital, or assets of another motor carrier, or by a corporation not a motor carrier of the whole or any part of the stock, share capital, or assets of two or more motor carriers, shall be a violation of Section 7 of the Act of October 15, 1914, as amended, known as the Clayton Act (15 U.S.C. § 18) if the anticompetitive effects proscribed by said Section 7 of the Clayton Act are outweighed in the public interest by the probable effect of the acquisition in meeting the transportation convenience and needs of the community or communities to be served, and unless such transportation convenience and needs may not be satisfied by any less anticompetitive alternative. The party challenging such an acquisition as a violation of said Section 7 of the Clayton Act shall bear the burden of proving the anticompetitive effects of the acquisition, and the party defending the acquisition shall bear the burden of proving that it is necessary to meet the transportation convenience and needs of the community or communities to be served and that such convenience and needs may not be satisfied by any less

anticompetitive alternative. For purposes of this section "motor carrier" means the same as "motor carrier" under Section 203(16) of this Act."

Section-by-Section Analysis

Sec. 2. Rate Bureaus

This section would amend section 5(a) of the Interstate Commerce Act to limit the activities of the rate bureaus. It would prohibit discussions, agreements or voting on single-line movements and would also prohibit any carrier not physically participating in a joint line or interline movement from participating in discussions, agreements, or votes on those movements. Three years after enactment of this Act, discussions, voting, and agreements on general rate increases would also be prohibited. This amendment would also prohibit bureau protest of rates and require rate bureaus to take final action within 120 days on any matter docketed for consideration, and require records of the individual votes of the bureau members, with such records open to Commission inspection and to public inspection through the Commission.

The rate bureaus exert a significant anticompetitive influence in the motor carrier industry, although they do provide certain necessary functions. This amendment, similar to the amendment proposed in the Railroad Revitalization Act would restrict the anticompetitive activities of the rate bureaus while enabling them to continue their beneficial activities such as considering joint line rates and tariff publishing.

Sec. 3. Aircraft Exemption

Section 203(b)(7a) of the Interstate Commerce Act exempts from economic regulations transportation of persons or property by motor vehicle "when incidental to transportation by aircraft." The legislative history of this section provides virtually no assistance in interpreting it, but the Commission by rulemaking has determined that to be within the exemption, the transportation must be (1) within the "terminal area" of the air carrier, and that terminal area is described in a tariff filed with the CAB; (2) part of a continuous movement received from or delivered to an air carrier; and (3) on a through air bill of lading. (See 49 CFR 210.40). The CAB at first accepted a radius of 25 miles as a rule of thumb in determining what is a terminal area, and this holding has been codified. (See 14 CFR 222). Although the Commission retains the authority to modify the 25-mile rule, it has been hesitant to do so. The 25-mile restriction has little relationship to economic reality and it has been subject of complaint by air cargo shippers. The amendment would extend the radius to 100 miles, while retaining the other tests for exemption.

Sec. 4. Private and Contract Carriers.

This section eases the restrictions now imposed upon private and contract carriers.

Private Carriers

The IC Act now allows a non-transportation concern to transport its goods within the scope of its own non-transportation business without obtaining a certificate of public convenience and necessity from the Commission. Essentially, this is the concept of a "private carrier" as defined in section 203(17). Private carriers may not, however, transport goods of others "for compensation" because they would then fall under the definition of a common carrier, or contract carrier (Section 203(15)) and they would have to obtain a certificate or permit from the Commission.

Furthermore, the Commission has held in a decision affirmed by the Supreme Court, Schenley Distilleries Motor Division, Inc., Contract Carrier Application, 44 M.C.C. 1717 (1944), aff'd. 326 U.S. 432 (1946), that a private carrier may not carry the goods of corporate affiliates or subsidiaries.

This amendment will eliminate this artificial restriction and the discrimination it causes, and allow affiliates to move the goods of other affiliates without losing their private carrier status.

Contract Carriers

Section 203(a)(15) of the Interstate Commerce Act defines contract carrier by motor vehicle as one which operates "under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the primary use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer". This section is in turn affected by section 209(b) which requires the Commission to issue a certificate to a contract carrier if that carrier is "fit, willing, and able" and if the proposed operation is "consistent with the public interest and the national transportation policy". That section then goes on to describe five factors to be considered with respect to each application.

Historically, the Commission has favored common carriers over contract carriers. The Commission has done this by restrictively interpreting the public interest test of section 209(b) to favor existing carriers and by arbitrarily imposing a rule of seven: even though an applicant satisfies one of the tests of section 203 and can meet the other tests of section 209, the applicant will be denied a permit if the applicant already serves seven shippers under contract. (Umthun Trucking Co. Ext.-Phosphatic Feed Supplements, 91 M.C.C. 691).

The effect of the Commission's interpretation has been to impede the growth of contract carriers and to deny the specialized services and expertise of the contract carriers to the shipping community and to the public at large. This amendment will prohibit the Commission from limiting the number of shippers when a carrier dedicates equipment for each shipper served, although where equipment is not dedicated it would allow the Commission to consider the number of shippers where relevant to show whether the carrier is meeting shippers' distinct needs. It will also prohibit the Commission from limiting contract carriers to a particular industry or territory. This amendment would also remove the reference to "the public interest and national transportation policy" in section 209, and require the Commission to issue a permit where the carrier fits under one of the definitions of section 203 and complies with the other requirements of section 209. Thus, the Commission is no longer authorized to consider the effect upon other carriers when deciding contract carrier applications. In addition, this amendment also makes clear that the Commission may not require a contract carrier to prove both "gates" of Section 203(9)(15): That the service is both dedicated and distinct. Under this amendment either gateway would be sufficient.

Section-by-Section Analysis

Sec. 5. Commercial Zones

Section 203(b)(8) of the Interstate Commerce Act exempts from economic regulations transportation within "commercial zones". The purpose is to exempt local traffic within the commercial areas of a city or locality. The term "commercial zone" is not defined in the Act, but is left to the Commission to determine. The Commission has formulated general rules for defining commercial zones and also made specific determinations in certain cases. Unfortunately, these rules are no longer consistent with the expansion of modern communities and economic reality. In addition, applications to change these rules take a great deal of time and are often unsuccessful. These outmoded definitions create a great deal of unnecessary and costly transportation.

Consider for example, a shipment from New York City to an outlying suburb of Washington, D.C. In many cases, under the existing rules, it will not be possible to deliver the item directly to the suburban location, because the carrier only has authority to transport to Washington, D.C. and its commercial zone. This means the item must first be shipped to Washington, unloaded, and loaded onto another carrier who has the appropriate point-to-point authority. This section of the bill requires the Commission, in consultation with the Secretary to reform its regulations dealing with commercial zones and its procedures for changing the boundaries of such zones within 2 years of the enactment of this section.

Sec. 6. New Plant

New plants have particular difficulty in anticipating transportation requirements, and therefore, need more flexibility in choosing carriers than existing plants. In addition, carriers are not anxious to undergo a long and costly certification process where the transportation needs are not well-defined.

This section would amend section 203(c) and exempt from economic regulations for a period of two years transportation to new plants, as long as that plant did not replace an existing plant. The second part of this amendment would then allow carriers to have "grandfather" rights to continue serving the plant after the initial two-year period if certain conditions are met. This exemption would simplify the administration of the Interstate Commerce Act and reduce the costs of obtaining certificates.

Section-by-Section Analysis

Sec. 7. Private Carrier-Leases to Common Carriers

Section 204(e) of the Interstate Commerce Act provides the Commission with authority to regulate the leasing of vehicles to carriers. The leasing regulations prescribed by the Commission in general provide that the leasing parties must enter into a written contract; that the equipment must be in the exclusive possession and control of lessee; that the compensation must be specified in the contract; and if the arrangement includes the driver, that the contract must be for a minimum of 30 days. The reason for these regulations was to prevent certain abuses of the motor carrier safety regulations and also to prevent carriers who could lease vehicles from obtaining an unfair advantage over carriers who could not lease.

In 1956, the Congress passed an amendment to the Act which withdrew from the Commission the power to regulate the duration of leases with respect to most vehicles used for the hauling of agricultural products. Our proposed amendment would expand that exemption to apply to all vehicle leasing whether by a common or private carrier. This would mean an expansion of capacity available to common carriers without the need to buy expensive equipment. For the private carriers, it would create an opportunity to obtain backhauls which they don't have today. This amendment would not withdraw the Commission's authority to require written leases and other matters. It would also not affect the present requirement that the leased motor vehicles to

be used by the motor carrier in a single movement or as one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based.

The Commission itself has recognized the problems associated with the trip leasing and recently in Ex Parte M.C. 43 (Sub. No. 3), Lease to Regulated Motor Carriers of Vehicles with Drivers by Private Carriers, proposed a rulemaking to relax the 30-day rule. This rulemaking, however, has not been completed, and even if the rulemaking is completed as proposed, the Commission in its notice indicated that the relaxation would only be "temporary" and apply only to equipment in existence prior to March 7, 1970, or replacements thereof.

Sec. 8. Entry

For most goods and services the buyer has a wide variety of choices ranging from high quality and high cost items to low quality and low cost items. He is able to select that combination of cost and quality which best suits his purposes and wants. For trucking services, however, the range of choices is limited.

Early decisions of the Commission recognized an obligation to protect existing carriers. In these cases, the Commission declared that new certificates should not be issued if the existing carriers could handle the traffic. Many of these decisions held that the existing service had to be inadequate to justify the entry of a new carrier. While later decisions have modified this position, adequacy of the present service is still of critical importance to the Commission. The amendment proposed in this section would open up the range of options available to the purchaser of trucking services and encourage innovation. This amendment would substantially change the requirements for entry by broadening the focus of the present entry test and by providing a new alternative test for entry.

Subsection (a) of this amendment requires the Commission to weigh in favor of an application if the new service would result in lower costs, greater efficiency (including fuel), better service, satisfy the shipper's preference for a different combination of services and rates, or would generally improve competition. This new provision would apply to any entry petition except one from a private carrier. The Commission has taken a dim view of allowing private carriers to become for-hire carriers. The amendment specifically provides that private carriers, who intend to remain private carriers, may not use the new standards and procedures to become common carriers.

The second part of the proposed amendment is a technical amendment.

In the proposed subsection (b), the Commission would be required to issue a certificate if the applicant demonstrates that it is "fit, willing, and able" and if the revenue derived from the proposed service will cover the "actual costs" of the service unless a protestant proved that the proposed rate was discretionary. The Commission would be specifically prohibited from considering the adequacy of existing service or the effects of the proposed entry upon competitors. In other words, the Commission would have to

issue an applicant a certificate if (1) the applicant were "fit, willing, and able"; (2) the rate was compensatory; and (3) the rate was not discriminatory.

The proposed subsection (c) would allow the Commission to require the proposed rate to be put into effect for up to one year as a condition for granting the certificate.

The proposed subsection (d) would define "actual costs" to include only those costs which are directly associated with the particular service.

In order to expedite such proceedings and to ensure that the Commission does not consider adequacy of service in an indirect manner, the Commission in the proposed subsection (e) could not require industry or system-wide data. Industry-wide data could be introduced at the option of the applicant, however. As a further safeguard, proposed subsection (f) would authorize the Secretary to enact cost and revenue standards, which the Commission must follow.

Subsection (g) provides that the rate authorized for a certificate may not be suspended or set aside for a period of two years. This amendment is intended to consolidate the various rate and entry questions in one hearing and relieve an applicant of the burden of defending a series of charges.

Subsection (h) would also expedite the consideration of entry hearings by requiring decisions to be rendered within one year of application for those applications filed within the first year of enactment. The one-year period for decision is still excessively long, but it recognizes that the Commission has a certain backload. After the first year, the decision period is limited to 90 days which is an adequate period in consideration of the prohibitions or the scope of the Commission's hearing.

The proposed subsection (i) would require the payment of an applicant's defense costs by protestants if the protest against entry fails. This provision is intended to discourage frivolous protests.

The foregoing amendments will substantially reform the present entry procedure, and allow entry as well as potential entry to play a much greater role as the natural regulator of market efficiency. The last part of the amendment requires the Secretary to study the effects of these amendments and the other amendments in the Act to determine whether they have satisfied the purposes of the Act, and to recommend any changes he thinks necessary to ease entry further, to produce more price flexibility, and in general, to meet the purpose of the Act by the third year following enactment.

Contract Carriers: Dual Operations

Sec. 9. Section 210 of the Interstate Commerce Act prohibits a single or related entity from holding both common and contract authority over the same route or within the same territory unless the Commission has affirmatively found that such authorities can be held consistent with the public interest and the National Transportation Policy. The purpose of this provision is to preclude a carrier which serves a shipper both as a contract and common carrier from in effect giving a rebate on the common carriage rates by charging artifically low contract rates. The Commission has consistently taken the position that to permit dual operations it must find that there is not even the remotest possibility of a rebate. This policy of not granting authority where there is just a theoretical possibility of rebate constitutes another unreasonable bar to entry and competition and is unnecessarily restrictive in light of the Commission's power to review carriers' operations and to revoke authorities under section 212.

The amendment proposed in this section would limit the application of section 210 and provide that the restriction regarding dual operations would not apply if the contract carrier established that its contract rates were compensatory. This requirement for a

compensatory rate is consistent with other sections of this bill, and would also protect against the possibility of a carrier charging an unreasonably low contract rate as a form of rebate.

Section-by-Section Analysis

Sec. 10. Suspension of Common Carrier Motor Rates

At present, the Commission has the authority to determine if a rate filed by a motor carrier is lawful, and while it is making that determination, it may suspend that new rate for up to seven months. However, since there is no limit upon the time for hearing, the ultimate decision may not be made until long after the expiration of the suspension period. The present procedure is often lengthy and the cost, uncertainty and delay associated with it limit the ability of a carrier to respond to the changing conditions of the market place. The present procedure also causes the hearing to focus upon "maybe's" and hypothetical arguments. A carrier proposes a rate; it is commonly suspended; and the hearing revolves around extensive testimony of what "might happen" if the rate would go into effect.

This amendment would expedite the hearing process by (i) providing that in all but exceptional cases rate hearings must be completed within 7 months and (ii) restricting the right of the Commission to suspend a rate increase or decrease if the increase or decrease is within certain percentages of prior rates. If the Commission failed to reach a decision within the required time, the rate would go into effect, subject to later complaint. The no-suspend zone would initially be phased in over a three-year period (7 percent, year 1; 12 percent, year 2; 15 percent, year 3). After this three-year period, there would be a permanent prohibition against suspending

any rate decreases and carriers could raise rates annually 15 percent without suspension. Within these limits, the only exception to the prohibition against suspension would be a charge of discrimination. In all cases where suspension is sought the protestant would be required to satisfy the standard used by Courts in applications for temporary restraining orders: the protestant would be required to establish immediate and irreparable injury, likelihood of success; and satisfaction of the public interest. To protect against unjust enrichment in cases where a rate increase is not suspended but is later found to be unreasonable, the amendment would require reimbursement of the difference between the initial rate and the rate ultimately allowed, with interest, to the concerned shippers. For carriers of passengers, since it would be very difficult to make such a refund to individual travelers, the bill provides that the carrier reduce its future fares in an appropriate amount. With respect to rate decreases that were suspended and later found justified, the amendment would allow payment of the difference to the shippers.

The no-suspend zone would not apply to any general rate increase of any type.

Sec. 11. Common Carrier Compensatory Rates

At present, the Act allows a rate to be found to be too low even though it covers the variable costs of the applicant. The present law discourages price decreases, interferes with efficient resource allocation, and is anticompetitive.

This section would amend the Interstate Commerce Act to provide that a carrier's rate which is above the carrier's variable cost for the specific transportation in question may not be found to be unjust or unreasonably low.

At the same time, in its study of the surface transportation industry, the Department has found that certain carriers - contrary to economic sense - have sought to decrease rates below variable costs. This section would also prohibit the Commission upon complaint from allowing rate decreases which are not compensatory. To provide for past rates which are not compensatory, this section would also prohibit the Commission from disallowing any rate increase which raises the level of a rate to a compensatory level.

Section-by-Section Analysis

Sec. 12. Contract Carrier Compensatory Rates

Under the Interstate Commerce Act, the Commission only has authority over minimum rates for contract carriers. This amendment - similar to the amendment in section 10- provides that the Commission may not find unreasonable a contract carrier rate which is compensatory.

Section-by-Section Analysis

Sec. 13. Commodity and Route Restrictions

The Commission in its administration of part II has imposed many arbitrary and unnecessary commodity and route restrictions in its certificates. This section would require the Commission in general to take all necessary steps to remove these wasteful and inefficient restrictions and to report to Congress within one year of enactment the specific steps it has taken pursuant to this directive.

In addition to this general change, this amendment would also reduce circuity of route in two specific ways. First, if a carrier was required to operate through a particular gateway city to serve any two points for six months or more and was providing a significant amount of service between these two points, the Commission shall, upon application of the carrier, remove the gateway requirement. Second, the Commission must broaden the present deviation rules to 25 percent.

This provision does not apply to bus routes.

Section-by-Section Analysis

Sec. 14. Discrimination

This amendment clarifies present law regarding the standing to raise the question of discrimination between various shippers. This amendment prohibits carriers from raising the issue of discrimination against another carrier. Since the possible discrimination is against a shipper, it should be raised by the shipper. In addition, this amendment would restrict the standing of shippers to allege discrimination to those shippers directly affected by the rate change. In other words, a shipper may not protest a rate change as the basis of discrimination unless the protesting shipper is also being served by the motor carrier in question and that motor carrier is transporting for the protesting shipper the commodity which is the subject of the rate change. This would insure that a shipper could not forestall rate changes afforded competitors by carriers more efficient than the carrier used by the shipper. Both of these changes should serve to expedite the rate hearing process.

Section-by-Section Analysis

Sec. 15. Back Hauls

Present regulation has restricted the ability of the motor carrier industry to use its resources efficiently. Many trucks move only partially loaded or entirely empty, and valuable fuel is wasted. This problem is particularly acute with respect to "exempt agricultural" trucking. Section 203(b)(6) of the IC Act exempts from regulation movements of certain agricultural goods. Thus, truckers may move agricultural items out of rural areas without certificates of public convenience and necessity. These same truckers, however, may not move regulated commodities on their return trip because they are not certificated.

This amendment is designed to reduce the problem of empty back hauls. It would allow "agricultural exempts" to carry regulated commodities, but only subsequent to a movement of agricultural items. It would apply only to small businesses of 3 or less trucks, and to avoid unfair competition with the regulated industry, all back haul movements of regulated commodities would have to move at a rate at least equal to the lowest rate filed by a regulated carrier for that same transportation. In addition, to ensure that this amendment applies only to true agricultural exempts, the revenue derived from hauling regulated commodities

for any year could not exceed the revenue from agricultural items for that same year.

Section-by-Section Analysis

Sec. 16. State Filing Requirements

In addition to the federal economic regulations imposed upon the motor carrier industry, the States also impose many requirements for registration and filings upon interstate trucking. While it is recognized that the States have a legitimate interest in such activities, it must also be recognized that many of the State requirements are unnecessarily duplicative and lacking in uniformity. Because of this, many times, the carriers' cost for filing far outweigh the fee paid to an individual State. This section would direct the Secretary to work with the industry and the States to develop legislative or other recommendations for providing a more efficient and equitable system of State regulation.

Motor Carrier Safety

Section-by-Section

Sec. 17. Originally, Part II of the Interstate Commerce Act gave the Commission the authority to regulate certain motor carriers with respect to safety. Section 6(e) of the Department of Transportation Act removed that authority from the Commission and placed it with the Secretary. This section amends Part II to strengthen the authority to govern the safety of motor carriers.

Even-handed enforcement is a basic starting point for any safety program, but such even-handed treatment must be based upon a consistent and logical statutory framework. The Secretary's present authority for motor carrier safety has many statutory gaps. The Secretary has broad authority to issue regulations for all carriers, but he may impose criminal penalties for some carriers and some violations, and civil penalties for others. Moreover, one of the prime deterrents to violating a safety regulation is the possible removal of a carrier's operating authority. But while the Secretary has the authority to regulate motor carrier safety, the Commission has the sole authority to revoke a carrier's permit because of safety violations. Unfortunately, because of a lack of interest or expertise, the Commission has not utilized this deterrent to its full potential. This amendment

would broaden the authority of the Secretary and essentially fill in these gaps.

Subsections (a) and (d) of this amendment would extend the authority of the Secretary to impose civil penalties to all persons subject to regulation and for all violations. At present, this authority exists only with respect to common and contract carriers and only for record-keeping and filing offenses. Private carriers and general safety violations are covered by way of criminal sanctions, but such sanctions have been found to be inflexible and inappropriate in many cases and very difficult to process to adjudication. These subsections would also increase the maximum civil penalty to $1,000 for a single violation, or $500 a day for a continuing violation.

Subsection (c) of the Section would increase the minimal fine for violating the Motor Carrier Safety Regulations (49 C.F.R. Parts 390-396) to a range of $250 to $1,000 for first offenses and $500 to $2,000 for subsequent offenses. The present minimal penalties are insufficient to serve as an adequate deterrent for violations of these Motor Carrier Safety Regulations. In addition, the existing criminal penalty provisions require the Government to

show knowledge and willfulness on the part of defendants. Some courts have interpreted the willfulness provision under the present statute so narrowly that ignorance of the law or the regulations constitutes a defense to prosecution for violating them. This is clearly an inappropriate requirement where the unsafe practice, rather than the intent to commit it, is what is proscribed for the public's protection. This amendment removes the word "willfully," but retains the word "knowingly" and thus the requirement to prove intent.

Subsection (e) of this amendment would authorize the Secretary to suspend or revoke the certificates or permits of common or contract carriers, respectively, if he determined after a formal administrative hearing subject to the Administrative Procedures Act that the carrier had violated Motor Carrier or Hazardous Materials safety regulations promulgated by the Secretary and that the operation of the carrier constituted an unreasonable risk to the public safety.

Private carriers do not operate via any certificate or permit, but this subsection would also authorize the Secretary to prohibit a private carrier from future operations as private carrier, under the same standards and procedures as applies to common and contract carriers. This subsection also allows the Secretary

after an informal hearing to prohibit carriers from operating pursuant to the special backhaul exemption provided in this bill if he determines their operation is unsafe and that they have violated safety regulations issued by the Secretary.

Section-by-Section Analysis

Motor Carrier Mergers

Sec. 18. (a) Presently, the ICC has jurisdiction under Section 5(2) and 5 (13) of the Interstate Commerce Act to approve mergers involving motor carriers and to immunize such acquisitions from the antitrust laws. This subsection is designed to eliminate the ICC's power to approve and thereby to immunize such acquisitions from the antitrust law. The result of this amendment is to vest exclusive jurisdiction in the Federal courts to test the legality of such transactions.

(b) The ICC presently has jurisdiction to enforce Sections 7 and 8 of the Clayton Act in respect of acquisitions and interlocking directorates involving motor carriers. This subsection would revoke the ICC's authority to enforce these sections of the Clayton Act in connection with motor carriers.

(c) It has been argued in ICC enforcement proceedings under Section 7 of the Clayton Act that because of language regarding common carrier acquisitions of branch lines in that section, trucking mergers ought to be given more liberal treatment under Section 7 than mergers between other kinds of firms. This subsection would make explicit the fact that such language is to be applied only to railroads and would thereby remove any basis

basic litigation on this point.

(d) This subsection provides that acquisitions involving motor carriers are subject to a test of legality under Section 7 of the Clayton Act which is slightly different than that applied to non-transportation firms. Such acquisitions otherwise violative of the Clayton Act could be defended as clearly necessary to meet the transportation convenience and needs of the community or communities to be served. To satisfy this standard, the acquisition must be proved to be the least anticompetitive alternative for the achievement of transportation convenience and needs. Moreover, it would be the burden of the party defending the legality of the acquisition to establish that it was the least anticompetitive alternative for the accomplishment of the necessary transportation convenience and needs.