

EXHIBIT 11

1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF EASTERN DISTRICT OF VIRGINIA
 3 ALEXANDRIA DIVISION

4 - - - - -x

5 NORFOLK SOUTHERN RAILWAY :
 6 COMPANY, :
 7 Plaintiff, : Case No. 1:08-CV-618

8 vs. :

9 CITY OF ALEXANDRIA, et :
 10 al., :
 11 Defendants. :

12 - - - - -x

13 CITY OF ALEXANDRIA, :
 14 Counterclaim Plaintiff, :
 15 vs. :

16 NORFOLK SOUTHERN RAILWAY : Case No. 1:08-CV-618

17 COMPANY, :

18 Counterclaim Defendant, :

19 and :

20 RSI LEASING, INC., :

21 Third-Party Defendant. :

22 - - - - -x

1 Highly confidential 30(b)(6) deposition of DAVID
2 T. LAWSON called for examination pursuant to notice
3 of deposition, on Thursday, October 16, 2008, in
4 Alexandria, Virginia, at the Offices of the
5 Alexandria City Attorney, City Hall, 301 King
6 Street, Suite 1300, at 9:17 a.m., before DONALD R.
7 THACKER, a Notary Public within and for the
8 Commonwealth of Virginia, when were present on
9 behalf of the respective parties:

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W. ERIC PILSK, ESQ.
Kaplan, Kirsch & Rockwell LLP
1001 Connecticut Avenue, Northwest
Washington, DC 20036
202.955.5600 202.955.5616
Epilsk@kaplankirsch.com
On behalf of City of Alexandria

- continued -

1 a break.

2 (10:50 a.m. -- recess -- 10:55 a.m.)

3 BY MR. PILSK:

4 Q First, I have what I think is a
5 straightforward question, but what is a pig
6 facility?

7 A That is slang for piggyback or otherwise
8 known as intermodal truck-to-rail, literally the
9 trailer of the truck, the semitruck, the trailer,
10 being put onto the railcar, or a container being put
11 onto a railcar, pig is slang for that.

12 Q And then a question about follow up on the
13 potential impacts of actually application of the
14 permit to the facility.

15 A Uh-huh.

16 Q The concerns you expressed about the
17 potential for cars, railcars backing up in the
18 system, congestion, the ability to move the ethanol
19 through the system in a timely manner, that is a
20 function largely of the volume of ethanol that is
21 actually being shipped through the system; is that
22 correct?

1 A I want to clarify. When you say, you are
2 relating backing up as a result of the specific
3 location at Van Dorn.

4 Q And the permit of 20 trucks per day.

5 A The application of the permit to that
6 specific location, and then cars that are coming
7 from multiple origins, predominantly in the Midwest
8 to this location, backing up in our rail system.

9 Q Correct. In other words, my question is,
10 if the volume of ethanol decreased such that 20 cars
11 a day were sufficient, 20 trucks a day was
12 sufficient to accommodate the volume being shipped,
13 those congestion effects wouldn't occur; is that
14 correct?

15 A If we had the restrictions imposed upon us
16 and they were only going to ship the equivalent
17 number of railcars to satisfy the demand then, no,
18 we would not have congestion, because that ethanol
19 will find another way, the market will find another
20 way to satisfy that demand eventually, so no.

21 MR. PILSK: Okay, I am done.

22 MR. BRYANT: All right.

1 Why don't we read. I think the purpose of
2 reading is just to make sure there are no
3 transcription errors.

4 MR. PILSK: You have the opportunity to
5 read the transcript and correct any transcription
6 errors. It doesn't mean that you can, you can't
7 restate your testimony or rephrase it or change what
8 you actually said, but if it was transcribed
9 incorrectly you have an opportunity to correct that
10 and talk to your counsel about that.

11 MR. BRYANT: Sure, we will go ahead and
12 read, since it is quick, and if there are instances
13 where he will read and say oh, it looks fine, at
14 that time you can waive it and I will tell Eric.

15 MR. PILSK: Why don't we keep this on the
16 record, because we have been consistently bad about
17 it. We have been good about designating when, if
18 highly confidential sections begin and not really
19 good about when they end.

20 MR. BRYANT: These depositions probably
21 start with and then from then on its probably
22 designated confidential. My suggestion is that we

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APPENDIX A

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APPENDIX B

**CODE
City of
ALEXANDRIA, VIRGINIA**

**Codified through
Ordinance No. 4555, enacted June 14, 2008.
(Supplement No. 87)**

Preliminaries

**CITY OFFICIALS
CITY OF
ALEXANDRIA, VIRGINIA**

MAYOR
William D. Euille

VICE MAYOR
Redella S. Pepper

COUNCIL MEMBERS
Ludwig P. Gaines
K. Rob Krupicka
Timothy B. Lovain
Paul C. Smedberg
Justin M. Wilson

CITY ATTORNEY
Ignacio B. Pessoa

CITY MANAGER
James K. Hartmann

CITY CLERK AND CLERK OF COUNCIL
Jackie M. Henderson

PART 1 The City Charter

Editorial Note: This part contains the Charter of the City of Alexandria, as provided by an act of the General Assembly of Virginia, approved April 7, 1950 (Acts 1950, ch. 536, p. 1038 et seq.) and all acts amendatory thereof. The original catchlines have been retained. In any instance in which the charter has no catchline, a catchline has been added by the editor.

* * *

Chapter 2 Powers

§ 2.01 General grant of powers.

§ 2.02 Financial powers.

§ 2.03 Powers relating to public works, utilities and properties.

§ 2.04 Power to make regulations for the preservation of the safety, health, peace, good order, comfort, convenience, morals and welfare of the city and its inhabitants.

§ 2.04.1 Powers relating to relationship between landlord and tenant.

§ 2.04.2 Powers relating to housing and community development.

§ 2.04.3. Alexandria Redevelopment and Housing Authority Board of Directors.

§ 2.05 Miscellaneous powers.

§ 2.06 Enforcement of regulations.

§ 2.07 Licenses, permits and service fees.

§ 2.08 Injunctions against the city.

* * *

An Act to provide a new charter for the City of Alexandria, Virginia, and to repeal Chapter 280 of the Acts of Assembly of 1932, entitled "An Act to provide a new charter for the City of Alexandria, Virginia," approved March 24, 1932, and acts amendatory thereto.

Be It Enacted By The General Assembly of Virginia:

CHAPTER 2 Powers

Sec. 2.01 General grant of powers.

The city shall have and may exercise all powers which are now or may hereafter be conferred upon or delegated to cities under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of a city government the exercise of which is not expressly prohibited by the said Constitution and laws and which in the opinion of the council are necessary or desirable to promote the general welfare of the city and the safety, health, peace, good order, comfort, convenience and morals of its inhabitants, as fully and completely as though such powers were specifically enumerated in this charter, and no enumeration of particular powers in this charter shall be held to be exclusive but shall be held to be in addition to this general grant of powers.

* * *

Sec. 2.03 Powers relating to public works, utilities and properties.

In addition to the powers granted by other sections of this charter the city shall have power:

- (a) To lay out, open, extend, widen, narrow, establish or change the grade, or close, vacate, abandon, construct, pave, curb, gutter, grade, regrade, adorn with shade trees, otherwise improve, maintain, repair, clean and light streets, including limited access or express highways, alleys, bridges, viaducts, subways and underpasses, and make and improve walkways upon streets and improve and pave alleys within the city; and the city shall have the same power and authority over any street, alley or other public place ceded or conveyed to the city or dedicated or devoted to public use as over other streets, alleys and other public places; provided, further, that whenever any ground shall have been opened to and used by the public as a street or alley for ten years it shall be considered as dedicated to the public and the city shall have the same authority and jurisdiction over and right and interest therein as it has over other streets.
- (b) To acquire, by purchase, condemnation, or otherwise and to construct, own, maintain and operate, within and without the city, public parks, parkways, playfields and playgrounds, and to lay out, equip and improve them with all suitable devices, buildings and other structures, and to charge admissions and fees for the use of such facilities.
- (c) To collect and dispose of garbage and other refuse and to impose and collect reasonable charges for such service, and to construct, maintain and operate, within and without the city, incinerators, dumps or other facilities or means of disposal of such garbage and other refuse.
- (d) To construct, maintain and operate, within and without the city, sanitary sewers, storm sewers, drains, and culverts.
- (e) To assess the whole or part of the cost of making and improving walkways on the existing streets, improving or paving existing alleys or constructing sewers, culverts and drains, upon the

owners of land abutting thereon or on the street or alley in which such sewer, culvert or drain is laid, provided that the amount of such assessment shall not exceed the peculiar benefit resulting to the landowner from the improvement; provided further, that in lieu of any such assessment for the construction of a sewer, culvert or drain, the city may assess and collect an annual sewer tax as compensation for the use thereof, and may provide for the commutation thereof, upon such terms and conditions as the council may provide by ordinance, but such assessment shall not be in excess of the peculiar benefit resulting therefrom to such abutting landowners; and provided further, that the city may acquire by condemnation or otherwise any interest or right of any owner of abutting property in the use of any sewer, culvert or drain, and thereafter charge such landowner for the use of such sewer, culvert or drain. The city may order such improvements to be made and the cost thereof apportioned in pursuance of an agreement between the city and the abutting landowners. In the absence of such an agreement the improvements may be ordered on a petition from not less than three-fourths of the landowners to be affected thereby or by a majority affirmative vote of the council.

(f) To construct, maintain and equip all buildings and other structures necessary or useful in carrying out the powers and duties of the city.

(g) To sell, lease or dispose of, except as otherwise provided in this chapter and in the Constitution and laws of the Commonwealth, land, buildings and other property of the city, real and personal.

(h) To control and regulate the use and management of all property of the city, real and personal.

(i) To acquire, by purchase, condemnation, lease, or otherwise, and to construct and maintain or authorize the construction and maintenance of bridges, viaducts, subways or underpasses over or under any stream, creek or ravine when any portion of such bridge, viaduct, subway or underpass is within the city limits, and to charge or authorize the charging of tolls for their use by the public, and to require compensation for their use by public utility, transmission or transportation companies, except as the right to require such compensation is affected by any contract heretofore or hereafter made with the company concerned; provided, that the council shall have authority to exempt from the payment of tolls for the use of any such bridge, viaduct, subway or underpass all vehicles, licenses to operate which have been paid to the city.

(j) To authorize by ordinance, in accordance with the Constitution and laws of the Commonwealth, the use of the streets for the laying down of street railway tracks and the operation of street railways therein under such conditions and regulations as may be prescribed by such ordinance or by any future ordinance, or to acquire by agreement or condemnation any such street railway and maintain and operate the same.

(k) To acquire, by purchase, condemnation, lease, or otherwise and to construct, own, maintain and operate within and without the city, places for the parking or storage of vehicles by the public, which shall include but not be limited to parking lots, garages, buildings and other land, structures, equipment and facilities, when in the opinion of the council they are necessary to relieve congestion in the use of streets and to reduce hazards incident to such use; provide for

their management and control by a department of the city government or by an agency established by ordinance for the purpose; authorize or permit others to use, operate or maintain such places or any portions thereof, pursuant to lease or agreement, upon such terms and conditions as the council may determine; and charge or authorize the charging of compensation for the parking or storage of vehicles or other services at or in such places.

(l) To acquire, by purchase, condemnation, lease, or otherwise and to construct, own, maintain and operate, within and without the city, airports and all the appurtenances thereof; provide for their management and control by a department of the city government; charge or authorize the charging of compensation for the use of any such airport or any of its appurtenances; lease any appurtenance of any such airport or any concession incidental thereto or, in the discretion of the council, lease any such airport and its appurtenances with the right to all concessions thereon to, or enter into a contract for the management and operation of the same with any person, firm or corporation on such terms and conditions as the council may determine.

(m) To acquire, by purchase, condemnation, lease, or otherwise, and to construct, own, maintain and operate, within and without the city, stadia, arenas, swimming pools and other sport and recreational facilities; provide for their management and control by a department of the city government; charge or authorize the charging of compensation for the use of or admission to such stadia, arenas, swimming pools and other sport and recreational facilities, including charges for any service incidental thereto; lease, subject to such regulations as may be established by ordinance, any such stadium, arena, swimming pool or other sport or recreational facility or any concession incidental thereto, or enter into a contract with any person, firm or corporation for the management and operation of any such stadium, arena, swimming pool or other sport or recreational facility, including the right to all concessions incident to the subject of such contract, on such terms and conditions as the council may determine.

(n) To acquire, by purchase, condemnation, lease, or otherwise and to construct, own, maintain and operate, within and without the city, water works, gas plants and electric plants, with the pipe and transmission lines incident thereto, and to charge and collect compensation therefor, and to provide penalties for the unauthorized use thereof; to acquire by purchase, condemnation or otherwise from lower riparian owners the right to divert streams into the present or any future reservoir.

(o) To acquire, by purchase, condemnation, lease, or otherwise and to construct, own, maintain and operate, within and without the city, landings, wharves, docks, canals and the approaches to and appurtenances thereof, tracks, spurs, crossings, switchings, terminals, warehouses and terminal facilities of every kind and description necessary or useful in the transportation and storage of goods, wares and merchandise; perform any and all services in connection with the receipt, delivery, shipment and transfer in transit, weighing, marking, tagging, ventilating, refrigerating, icing, storing and handling of goods, wares and merchandise; prescribe and collect charges from vessels coming into or using any of the landings, wharves and docks, and from persons using any of the facilities above prescribed; provide for the management and control of such facilities or any of them by a department of the city government; lease any or all of such facilities or any concessions properly incident thereto to any person, firm or corporation for the maintenance and operation of any or all of such facilities on such terms and conditions as the

council may determine; apply to the proper authorities of the United States to grant to the city the privilege of establishing, maintaining and operating a foreign trade zone within or without the city; regulate the use of other landings, wharves and docks located on the Potomac River within or near the city; prevent and remove obstructions from the harbor in, upon or near the landings, wharves, docks or canals adjacent thereto, and collect from the person or persons responsible for such obstructions the cost of their removal; close or discontinue the use of any such wharf, landing, dock or canal now owned or hereafter acquired by the city and upon the closing or discontinuance of such use the same shall thereupon be forever discharged from any public use or easement or from any obligation theretofore imposed by reason of such public use or easement by statute or otherwise.

(p) To acquire, by purchase, condemnation, lease, or otherwise such other utilities, abattoirs and other enterprises within as well as without the city, as may be deemed to be in the public interest.

(q) To compel persons sentenced to confinement in the city jail for petty larceny or other misdemeanor or other violations of the city ordinances to work on the public streets, parks or other public works of the city; and on the requisition of the judge of the circuit court it shall be the duty of the sheriff of the city to deliver such person to the duly authorized agent of the city for such purposes from day to day as be may be required.

(r) To give names to or alter the names of streets.

(s) To contribute funds or other aid to the building or improvements of permanent public roads leading to the city or of bridges on such roads, or to the purchase of such roads by an affirmative vote of two-thirds of the council provided that no such appropriation shall be made towards the building, purchase, or improvement of any road or bridge at a point more than five miles beyond the corporate limits of the city measured along the route of such road.

(t) To sell any product or by-product of any utility owned and operated by the city.

(u)(1) To acquire, establish, construct, improve, enlarge, operate and maintain a sewage disposal system with all necessary sewers, conduits, pipe lines, pumping and ventilating stations, treatment plants and works, plants and facilities for the manufacture of by-products, and other plants, structures, boats, conveyances and other real and personal property necessary for the operation of the sewage disposal system.

(2) To acquire by purchase, gift, condemnation or otherwise, real estate, or rights to easements therein, necessary or convenient for establishment, enlargement, maintenance or operation of such sewage disposal system, and the right to dispose of property so acquired no longer necessary for the use of such system; provided, that the provisions of section 25-233 of the Code of Virginia shall apply to any property belonging to any corporation possessing the power of eminent domain that may be sought to be taken by condemnation hereunder.

(3) To borrow money for the purpose of acquiring, establishing, constructing, improving and enlarging the sewage disposal system and to issue bonds therefor in the name of the City of Alexandria, as hereinafter provided.

(4) To accept gifts or grants of real or personal property, money, material, labor or supplies for the establishment and operation of such sewage disposal system, and to make and perform such agreements or contracts as may be necessary or convenient in the procuring or acceptance of such gifts or grants.

(5) To enter on any lands, waters and premises for the purpose of making surveys, borings, soundings and examinations for acquiring, constructing and operating the sewage disposal system and for the prevention of pollution of state waters.

(6) To enter into contracts with the United States of America, or any department or agency thereof, or with the Commonwealth of Virginia or any other government or public agency in the United States, or with any person, firm or corporation providing for or in relation to the use, treatment and disposal of sewage and industrial wastes and by-products.

(7) To require that all sewage and industrial waste created or originating upon any and all real estate or anywhere within the city be disposed of through the sewage disposal system.

(8) To fix, charge and collect fees, rents or other charges for the use and services of the sewage disposal system. Such fees, rents and charges may be charged to and collected from any person contracting for the same, or from the owner or the occupant, or some or all of them, who uses or occupies any real estate which directly or indirectly is, or has been or will be connected with the sewage disposal system or from which originates, has originated or will originate sewage or industrial wastes, or either, which directly or indirectly have entered or will enter the sewage disposal system; and the owner or occupant of any such real estate shall pay to the city such fees, rents and charges at the time and place where the same are due and payable.

Such fees, rents and charges, being in the nature of use or service charges for use of the sewage disposal system, shall be in addition to tap charges heretofore or hereafter collected for connection to and use of the regular sewer pipes of the city, and shall, as nearly as the council shall deem practicable and equitable, be uniform for the same type, class and amount of use or service of the sewage disposal system, and may be based or computed either on the consumption of water on or in connection with the real estate, making due allowances for commercial use of water, or on the number and kind of water outlets on or in connection with the real estate or on the number and kind of plumbing or sewage fixtures or facilities on or in connection with the real estate, or on the number or average number of persons residing or working on or otherwise connected or identified with the real estate, or any other factors determining the type, class and amount of use or service of the sewage disposal system, or on any combinations of such factors, or on such other basis as the council may determine. Such fees, rents and charges shall be due and payable at such time as the council may determine, and the council may require the same to

be paid in advance for periods of not more than six months. The revenue derived from any or all of such fees, rents and charges is hereby declared to be revenue of such sewage disposal system.

In the event the fees, rents or charges charged for the use and services of the sewage disposal system by or in connection with any real estate shall not be paid when due, interest shall at the time begin to accrue thereon at the annual rate of six percent, plus such penalty as the council may determine, and the person or corporation supplying water for the use of such real estate, or the owner or occupant thereof, shall cease supplying water thereto at the request of the city manager.

Such fees, rents and charges and the interest due thereon may be recovered by the City of Alexandria by action at law or suit in equity and shall constitute a lien against the property ranking on a parity with liens for unpaid city taxes.

(v) To acquire by purchase, exchange, gift, lease or otherwise real estate or any interest therein, whether located within or without the city or State, lying between the center line of the George Washington Memorial Parkway (also known as Washington Street) on the west, the present established bulkhead line in the Potomac River on the east and the corporate limits of the City of Alexandria on the north and south as projected to said present established bulkhead line, for the purpose of public use, or sale, lease or exchange for such reasonable and fair condition and upon such terms and conditions as the city council shall determine.

Such sale, lease or exchange by the city may be to or with any person, firm, corporation or entity and for any purpose which the city council may determine to be in the public interest.

(w) To acquire by purchase, exchange, gift, lease or otherwise, real or personal property or any interest therein for contribution and conveyance to the Washington Metropolitan Area Transit Authority as a portion of the city's participating share of the costs of the Authority's Mass Transit Plan.

(x) With the use of parking meters, to assess charges for the privilege of parking on designated public streets and to use the revenues derived therefrom for any public purpose incident to the acquisition, maintenance or provision of places for the parking and storage of vehicles by the public at any location in the city. (Acts 1971, Ex. Sess., ch. 166, Sec. 1; Acts 1975, ch. 511, § 1; Acts 1976, ch. 669; Acts 1983, ch. 814, § 1; Acts 1986, ch. 459, Sec. 1)

Sec. 2.04 Power to make regulations for the preservation of the safety, health, peace, good order, comfort, convenience, morals and welfare of the city and its inhabitants.

In addition to the powers granted by other sections of this charter the city shall have power to adopt ordinances, not in conflict with this charter or prohibited by the general laws of the Commonwealth, for the preservation of the safety, health, peace, good order, comfort, convenience, morals and welfare of its inhabitants. Among such powers, but not in limitation thereof, the city shall have power:

(a) To provide for the prevention of vice, immorality, vagrancy and drunkenness; prevention and quelling of riots, disturbances and disorderly assemblages; suppression of houses of ill-fame

and gambling places and gambling devices of all kinds; restraint of mendicants; prevention of lewd and disorderly conduct or exhibitions; prevention of loitering, and prevention of conduct in the streets dangerous or annoying to the public.

(b) To regulate the construction, maintenance, repair and demolition of buildings and other structures and the plumbing, electrical, heating, elevator, escalator, boiler, unfired pressure vessel, and air conditioning installations therein, for the purpose of preventing fire and other dangers to life and health; to establish fire zones and to prohibit the construction of wooden buildings and wooden repairs and additions to buildings.

(c) To provide for the protection of the city's property, real and personal, the prevention of the pollution of the city's water supply, and the regulation of the use of parks, playgrounds, playfields, recreational facilities, landings, docks, wharves, canals, airports and other public property, whether located within or without the city. For the purpose of enforcing such regulations all city property wherever located shall be under the police jurisdiction of the city. Any member of the police force of the city or employee thereof appointed as a special policeman shall have power to make arrests for violation of any ordinance, rule or regulation adopted pursuant to this section and the appropriate district court shall have jurisdiction in all cases arising thereunder.

(d) To grant or authorize the issuance of permits under such terms and conditions as the council may impose for the use of streets, alleys and other public places of the city by railroads, street railways, buses, taxicabs, pedicabs and other vehicles for hire; prescribe the location in, under or over, and grant permits for the use of, streets, alleys, and other public places for the maintenance and operation of tracks, poles, wires, cables, pipes, conduits, bridges, subways, vaults, areas, parking places, bus stops, and cellars; require tracks, poles, wires, cables, pipes, conduits and bridges to be altered, removed or relocated either permanently or temporarily; charge and collect compensation for the privileges so granted; and prohibit such use of the streets, alleys and other public places of the city, and no such use shall be made of the streets, alleys or other public places of the city without the consent of the council.

(e) To prevent any obstruction of or encroachment over, under or in any street, alley, sidewalk or other public place; provide penalties for maintaining any such obstruction or encroachment; remove the same and charge the cost thereof to the owner or owners, occupant or occupants of the property so obstructing or encroaching, and collect the sum charged in any manner provided by law for the collection of taxes; require the owner or owners or the occupant or occupants of the property, so obstructing or encroaching to remove the same; pending such removal charge the owner or owners of the property so obstructing or encroaching compensation for the use of such portion of the street, alley, sidewalk or other public place obstructed or encroached upon the equivalent of what would be the tax upon the land so occupied if it were owned by the owner or owners of the property so obstructing or encroaching, and, if such removal shall not be made within the time ordered, impose penalties for each and every day that such obstruction or encroachment is allowed to continue thereafter; authorize encroachments upon streets, alleys, sidewalks or other public places, subject to such terms and conditions as the council may prescribe, but such authorization shall not relieve the owner or owners, occupant or occupants of the property encroaching, of any liability for negligence on account of such encroachment; and

recover possession of any street, alley, sidewalk or other public place or any other property of the city by suit or action in ejectment.

(f) To prescribe the route and grade of any railroad laid in the city, regulate the operation of locomotives and cars, and exclude such locomotives and cars from the city provided no contract between the city and the corporation operating such locomotives or cars is violated by such action.

(g) To regulate the operation of motor and other vehicles and exercise control over traffic in the streets of the city and provide penalties for the violation of such regulations, provided that ordinances or administrative regulations adopted by virtue of this subsection shall not be inconsistent with the provisions of the Motor Vehicle Code of Virginia. All fines imposed for the violation of such ordinances and regulations shall be paid into the city treasury.

(h) To regulate, in the interest of public health, the production, preparation, distribution, sale and possession of milk, other beverages and foods for human consumption, and the places in which they are produced, prepared, distributed, sold, served or stored; regulate the construction, installation, maintenance and condition of all water and sewer pipes, connections, toilets, water closets and plumbing fixtures of all kinds; regulate the construction and use of septic tanks and dry closets, where sewers are not available, and the sanitation of swimming pools and lakes; provide for the removal of night soil, and charge and collect compensation for the removal thereof; compel the use of sewers, the connection of abutting premises therewith, and the installation in such premises of suitable sanitary facilities; regulate or prohibit connections to and use of sewers; provide for the quarantine of any person afflicted with a contagious or infectious disease, and for the removal of such person to a hospital or ward specially designated for contagious or infectious diseases; inspect and prescribe reasonable rules and regulations in the interest of public health, with respect to private hospitals, sanatoria, convalescent homes, clinics and other private institutions, homes and facilities for the care of the sick, of children, the aged and the destitute; provide and maintain hospitals and compel the removal of patients to the same; require the registration of births in the city; regulate in the interest of public health the construction, maintenance and operation of laundries; and make and enforce all regulations necessary to preserve and promote public health and sanitation and protect the inhabitants of the city from contagious, infectious or other diseases.

(i) To regulate cemeteries and burials therein, prescribe the records to be kept by the owners of such cemeteries, prohibit all burials except in a public burying ground, and to prohibit burial of the dead within the city limits.

(j) To regulate or prohibit the exercise of any dangerous, offensive or unhealthful business, trade or employment, and the transportation of any offensive or dangerous substance.

(k) To regulate the light, ventilation, sanitation and use and occupancy of buildings heretofore or hereafter constructed, altered, remodeled or improved, and the sanitation of the premises surrounding the same.

(l) To regulate the emission of smoke, the construction, installation and maintenance of fuel burning equipment, and the methods of firing and stoking furnaces and boilers.

(m) To compel the removal of weeds from private and public property and snow from sidewalks; to compel the covering or removal of offensive, unwholesome, unsanitary or unhealthful substances allowed to accumulate in or on any place or premises; to require the filling in to the street level of the portion of any lot adjacent to a street where the difference in level between the lot and the street constitutes a danger to life and limb; to compel the raising or draining of grounds subject to be covered by stagnant water; to require the razing or repair of all unsafe, dangerous or unsanitary public or private buildings, walls or structures which constitute a menace to the health and safety of the occupants thereof or the public; to require the repair of any damaged, defective or deteriorated condition of dwellings or dwelling units when such condition adversely affects the health or safety of the occupants or the general public; to compel the abatement of smoke and dust and the elimination of unnecessary noise; to regulate or prevent slaughterhouses or other offensive business within the city; to regulate the transportation of articles through the streets; to provide means for and to regulate the cleaning of all dry closets and to assess against the owner or occupant of the premises where same is located a reasonable charge therefor, which shall be collected as other city taxes; and to compel the abatement or removal of any and all other nuisances whatsoever within the city or upon property owned by the city beyond its limits. If after such reasonable notice as the council may prescribe by ordinance the owner or owners, occupant or occupants of the property or premises affected by the provisions of this subsection shall fail to abate or obviate the condition or nuisance, the city may do so and charge and collect the cost thereof from the owner or owners, occupant or occupants of the property affected in any manner provided by law for the collection of taxes. There shall be a lien for said cost upon the real estate from which the nuisance or condition was abated or removed by the city, the lien to continue until actual payment of such cost shall have been to the city.

(n) To regulate or prohibit the making of fires in the streets, alleys and other public places in the city and to regulate the making of fires on private property.

(o) To regulate or prohibit the manufacture, storage, transportation, possession and use of explosive or inflammable substances and the use and exhibition of fireworks and discharge of firearms.

(p) To regulate or prohibit the running at large and the keeping of animals and fowl and provide for the impounding and confiscation of any such animal or fowl found at large or kept in violation of such regulations; and to provide for the appointment of dog wardens and deputy dog wardens who, in the enforcement of the dog laws of the city, shall have the powers of a state game warden, within the city only.

(q) To prevent cruelty to and abuse of animals and the driving of horses and other animals at improper speeds.

(r) To regulate the sale of goods, wares or merchandise at auction; regulate the conduct of and prescribe the number of pawn shops and dealers in secondhand goods, wares and merchandise;

regulate or prohibit the peddling or hawking of any article for sale on the streets of the city; regulate the soliciting of goods, wares, merchandise or services; prevent fraud or deceit in the sale of goods, wares and merchandise; regulate junk dealers; require the weighing, measuring, gauging and inspection of goods, wares and merchandise offered for sale; require weights and measures to be sealed and subject to inspection; and provide for the appointment of a sealer and one or more weighmaster who shall perform such duties and functions as may be prescribed by ordinance.

(s) To establish markets in the city and regulate the same and to make and enforce regulations regarding the keeping and sale of fresh meat, eggs, vegetables and other perishable groceries.

(t) To regulate livery stables, garages, gasoline filling stations, theatrical performances or other public shows or exhibitions, the hiring or use for pay of carriages, automobiles and other vehicles, billiard parlors, bowling alleys, pistol galleries, establishments that sell or display animals, and to grant or refuse licenses to these and similar occupations and employments as may be deemed proper.

(u) To require a permit for the removal of household goods and chattels from a residence in the City of Alexandria to a place outside said city.

(v) To provide a complete building code for the city, and to provide setback lines on the streets beyond which no building may be constructed and to provide for a city planning commission and define its powers, subject to the limitations imposed in Chapter 9 of this charter.

(w) To adopt plans and adopt and modify the official map of the city; divide the city into land use zones in accordance with the provisions of Chapter 9 of this charter; regulate and restrict the height and number of stories of buildings and other structures, the size of yards and courts, the density of populations, and the location and use of buildings for trade, industry, business, residence or other purposes; provide for safe and sanitary housing accommodation for families of low income; create a housing authority; adopt, modify and carry out plans proposed by the planning commission for the clearance of slum districts and rehabilitation of blighted areas; adopt, modify and carry out plans proposed by the planning commission for replanning, improvement and redevelopment of neighborhoods and for the replanning, reconstruction or redevelopment of any area or district which may have been destroyed in whole or in part by disaster.

(x) To adopt by reference an electrical code promulgated by a national association or organization.

(y) To provide for a curfew if, in the opinion of council, an emergency exists and the ordinance adopting a curfew contains a specific statement of the emergency claimed.

(z) To regulate health, athletic, massage and bath clubs or establishments.

(aa) To regulate security guards and private detectives.

(bb) To provide a burglary prevention code for the city.

(cc) Notwithstanding any other provision of law, to require that owners and operators of multifamily rental dwellings constructed in the city prior to September 1, 1974, provide and install dead bolt locks and peepholes on exterior solid doors to each dwelling unit and locks on all exterior glass doors at all levels and windows at a ground level which are capable of being opened.

(dd) To control or attempt eradication of *Lymantria dispar* (gypsy moths) on private and public property.

Notwithstanding any limitation as to place that may be imposed by section 2.04 or any other section of this charter, the powers granted by this charter may be applied to any place, public or private.

(ee) Notwithstanding any contrary provision of law, general or special, to prohibit or regulate the possession of an opened alcoholic beverage container (a) in or on a street, alley, sidewalk or other pedestrian walkway, park, playground, or parking lot so long as "the public has, or is permitted to have, access" to such areas, as that phrase is used in the definition of "public place" set out in § 4.1-100 of the Code of Virginia (1950), as amended, and (b) in a motor vehicle on any such street, alley or parking lot, whether or not such vehicle is moving. Violation of this subdivision shall be a Class 4 misdemeanor. The prohibitions or regulations shall not apply to the licensed establishments identified in subsection B of § 4.1-308 of the Code of Virginia or in the case of events identified in subsection C of § 4.1-308. (Acts 1964, ch. 288; Acts 1970, ch. 492; Acts 1971, Ex. Sess., ch. 166, § 1; Acts 1972, ch. 808, § 1; Acts 1976, ch. 669; Acts 1980, ch. 591, § 1; Acts 1983, ch. 314, § 1; Acts 1984, ch. 486, § 1; Acts 1995, ch. 782, § 1)

* * *

APPENDIX C

§ 174.5 Carrier's materials and supplies.

This subchapter applies to the transportation of a carrier's materials and supplies moving by rail, except that the shipper's certification is not required when these materials and supplies are being transported by the carrier who owns them. The requirements of this subchapter do not apply to railway torpedoes or fusees when carried in engines or rail cars. Railway torpedoes must be in closed metal boxes when not in use.

[Amdt. 174-26B, 41 FR 57071, Dec. 30, 1976]

§ 174.9 Inspection and acceptance.

At each location where a hazardous material is accepted for transportation or placed in a train, the carrier shall inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures and leakage. This inspection may be performed in conjunction with inspections required under parts 215 and 232 of this title.

[Amdt. 174-83, 61 FR 28677, June 5, 1996]

§ 174.14 Movements to be expedited.

(a) A carrier must forward each shipment of hazardous materials promptly and within 48 hours (Saturdays, Sundays, and holidays excluded), after acceptance at the originating point or receipt at any yard, transfer station, or interchange point, except that where biweekly or weekly service only is performed, a shipment of hazardous materials must be forwarded on the first available train.

(b) A tank car loaded with any Division 2.1 (flammable gas), Division 2.3 (poisonous gas) or Class 3 (flammable liquid) material, may not be received and held at any point, subject to forwarding orders, so as to defeat the purpose of this section or of § 174.204 of this subchapter.

[Amdt. 174-26, 41 FR 16092, Apr. 15, 1976, as amended by Amdt. 174-68, 55 FR 52677, Dec. 21, 1990]

§ 174.16 Removal and disposition of hazardous materials at destination.

(a) *Delivery at non-agency stations.* A shipment of Class 1 (explosive) materials may not be unloaded at non-agen-

cy stations unless the consignee is there to receive it or unless properly locked and secure storage facilities are provided at that point for its protection. If delivery cannot be so made, the shipment must be taken to next or nearest agency station for delivery.

(b) *Delivery at agency stations.* A carrier shall require the consignee of each shipment of hazardous materials to remove the shipment from carrier's property within 48 hours (exclusive of Saturdays, Sundays, and holidays) after notice of arrival has been sent or given. If not so removed, the carrier shall immediately dispose of the shipments as follows:

(1) *Division 1.1 or 1.2 (explosive) materials:* If safe storage is available, by storage at the owner's expense; if safe storage is not available, by return to the shipper, sale, or destruction under supervision of a competent person; or if safety requires, by destruction under supervision of a competent person.

(2) *Hazardous materials, except Division 1.1 or 1.2 (explosive) materials, in carload shipments:* By storage on the carrier's property; by storage on other than the carrier's property, if safe storage on the carrier's property is not available; or by sale at expiration of 15 calendar days after notice of arrival has been sent or given to the consignee, provided the consignor has been notified of the non-delivery at the expiration of a 48-hour period and orders for disposition have not been received.

(3) *Hazardous materials, except Division 1.1 or 1.2 (Class A explosive) materials, in less-than-carload shipments:* By return to the shipper if notice of non-delivery was requested and given the consignor as prescribed by the carrier's tariff, and orders for return to shipper have been received; by storage on the carrier's property; by storage on other than the carrier's property, if safe storage on carrier's property is not available; or by sale at expiration of 15 calendar days after notice of arrival has been sent or given to the consignee, provided the consignor has been notified of non-delivery at expiration of a 48-hour period and orders for disposition have not been received.

[Amdt. 174-26, 41 FR 16092, Apr. 15, 1976, as amended by Amdt. 174-68, 55 FR 52677, Dec. 21, 1990; 66 FR 45383, Aug. 28, 2001]

§ 174.304 Class 3 (flammable liquid) materials in tank cars.

A tank car containing a Class 3 (flammable liquid) material, other than liquid road asphalt or tar, may not be transported by rail unless it is originally consigned or subsequently reconsigned to a party having a private track on which it is to be delivered and unloaded (see §171.8 of this subchapter) or to a party using railroad siding facilities which are equipped for piping the liquid from the tank car to permanent storage tanks of sufficient capacity to receive the entire contents of the car.

[Amdt. 174-26, 41 FR 16092, Apr. 15, 1976, as amended by Amdt. 174-32, 43 FR 48644, Oct. 19, 1978; Amdt. 174-68, 55 FR 52683, Dec. 21, 1990]

Subparts H-I [Reserved]**Subpart J—Detailed Requirements for Division 6.1 (Poisonous) Materials****§ 174.600 Special handling requirements for materials extremely poisonous by inhalation.**

A tank car containing a material extremely poisonous by inhalation which is a Division 2.3 material in Hazard Zone A or a Division 6.1 material in Hazard Zone A, as defined in §173.133(a)(2) of this subchapter, may not be transported by rail unless it is originally consigned or subsequently reconsigned to a party having a private track on which it is to be delivered and unloaded (see §171.8 of this subchapter) or to a party using railroad siding facilities which are equipped for piping the liquid or gas from the tank car to permanent storage tanks or sufficient capacity to receive the entire contents of the car. See the requirements in §174.290 for materials extremely poisonous by inhalation which are shipped by, for, or to the Department of Defense.

[Amdt. 174-68, 55 FR 52684, Dec. 21, 1990]

§ 174.615 Cleaning cars.

(a) [Reserved]

(b) After Division 6.1 (poisonous) materials are unloaded from a rail car, that car must be thoroughly cleaned

unless the car is used exclusively in the carriage of Division 6.1 (poisonous) materials.

[Amdt. 174-26, 41 FR 16092, Apr. 15, 1976, as amended by Amdt. 174-68, 55 FR 52684, Dec. 21, 1990; Amdt. 174-82, 61 FR 18933, Apr. 29, 1996]

§ 174.680 Division 6.1 (poisonous) materials with foodstuffs.

(a) Except as provided in paragraph (b) of this section, a carrier may not transport any package bearing a POISON or POISON INHALATION HAZARD label in the same car with any material marked as, or known to be, a foodstuff, feed or any other edible material intended for consumption by humans or animals.

(b) A carrier must separate any package bearing a POISON label displaying the text "PG III," or bearing a "PG III" mark adjacent to the POISON label, from materials marked as or known to be foodstuffs, feed or any other edible materials intended for consumption by humans or animals, as required in §174.81(e)(3) for classes identified with the letter "O" in the Segregation Table for Hazardous Materials.

[64 FR 10781, Mar. 5, 1999]

Subpart K—Detailed Requirements for Class 7 (Radioactive) Materials**§ 174.700 Special handling requirements for Class 7 (radioactive) materials.**

(a) Each rail shipment of low specific activity materials or surface contaminated objects as defined in §173.403 of this subchapter must be loaded so as to avoid spillage and scattering of loose material. Loading restrictions are prescribed in §173.427 of this subchapter.

(b) The number of packages of Class 7 (radioactive) materials that may be transported by rail car or stored at any single location is limited to a total transport index and a total criticality safety index (as defined in §173.403 of this subchapter) of not more than 50 each. This provision does not apply to exclusive use shipments as described in §§173.403, 173.427, 173.441, and 173.457 of this subchapter.

- 177.804 Compliance with Federal Motor Carrier Safety Regulations.
- 177.810 Vehicular tunnels.
- 177.816 Driver training.
- 177.817 Shipping papers.
- 177.823 Movement of motor vehicles in emergency situations.

Subpart B—Loading and Unloading

- 177.834 General requirements.
- 177.835 Class 1 materials.
- 177.837 Class 3 materials.
- 177.838 Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (pyroforic liquid) materials.
- 177.839 Class 8 (corrosive) materials.
- 177.840 Class 2 (gases) materials.
- 177.841 Division 6.1 and Division 2.3 materials.
- 177.842 Class 7 (radioactive) material.
- 177.843 Contamination of vehicles.

Subpart C—Segregation and Separation Chart of Hazardous Materials

- 177.848 Segregation of hazardous materials.

Subpart D—Vehicles and Shipments in Transit; Accidents

- 177.854 Disabled vehicles and broken or leaking packages; repairs.

Subpart E—Regulations Applying to Hazardous Material on Motor Vehicles Carrying Passengers for Hire

- 177.870 Regulations for passenger carrying vehicles.

AUTHORITY: 49 U.S.C. 5101-5127; 49 CFR 1.53.

Subpart A—General Information and Regulations

§ 177.800 Purpose and scope of this part and responsibility for compliance and training.

(a) *Purpose and scope.* This part prescribes requirements, in addition to those contained in parts 171, 172, 173, 178 and 180 of this subchapter, that are applicable to the acceptance and transportation of hazardous materials by private, common, or contract carriers by motor vehicle.

(b) *Responsibility for compliance.* Unless this subchapter specifically provides that another person shall perform a particular duty, each carrier, including a connecting carrier, shall perform the duties specified and comply with all applicable requirements in this part

and shall ensure its hazmat employees receive training in relation thereto.

(c) *Responsibility for training.* A carrier may not transport a hazardous material by motor vehicle unless each of its hazmat employees involved in that transportation is trained as required by this part and subpart H of part 172 of this subchapter.

(d) *No unnecessary delay in movement of shipments.* All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

[Amdt. 177-79, 57 FR 20954, May 15, 1992, as amended by Amdt. 177-86, 61 FR 18933, Apr. 29, 1996]

§ 177.801 Unacceptable hazardous materials shipments.

No person may accept for transportation or transport by motor vehicle a forbidden material or hazardous material that is not prepared in accordance with the requirements of this subchapter.

[Amdt. 177-87, 61 FR 27175, May 30, 1996]

§ 177.802 Inspection.

Records, equipment, packagings and containers under the control of a motor carrier, insofar as they affect safety in transportation of hazardous materials by motor vehicle, must be made available for examination and inspection by a duly authorized representative of the Department.

[Amdt. 177-71, 54 FR 25015, June 12, 1989]

§ 177.804 Compliance with Federal Motor Carrier Safety Regulations.

Motor carriers and other persons subject to this part must comply with 49 CFR part 383 and 49 CFR parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those regulations apply.

[68 FR 23842, May 5, 2003]

§ 177.810 Vehicular tunnels.

Except as regards Class 7 (radioactive) materials, nothing contained in parts 170-189 of this subchapter shall be so construed as to nullify or supersede regulations established and published

APPENDIX D

HAZARDOUS MATERIALS TRANSPORTATION REAUTHORIZATION AND AMENDMENTS ACT OF 1990

OCTOBER 17, 1990.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ANDERSON, from the Committee on Public Works and Transportation, submitted the following

REPORT

[To accompany H.R. 3520, which on October 25, 1989, was referred jointly to the Committee on Energy and Commerce and the Committee on Public Works and Transportation]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 3520) to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1990 and 1991, to provide for greater consistency in laws and regulations governing the transportation of hazardous materials in intrastate, interstate, and foreign commerce, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Hazardous Materials Transportation Reauthorization and Amendments Act of 1990".

(b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Regulations governing transportation of hazardous materials.
- Sec. 4. Handling of hazardous materials.
- Sec. 5. Registration.
- Sec. 6. Safety permits.
- Sec. 7. Public sector training and planning.
- Sec. 8. Elimination of publication requirement for renewal of exemptions.
- Sec. 9. Definition of radioactive materials.
- Sec. 10. Purpose of review of hazardous materials transportation.
- Sec. 11. Penalties.
- Sec. 12. Specific relief.
- Sec. 13. Relationship to other laws.
- Sec. 14. Authorization of appropriations.

- Sec. 15. False representations and unlawful tampering.
 Sec. 16. Unsatisfactory safety ratings.
 Sec. 17. Uniformity of State registration and permitting forms and procedures.
 Sec. 18. Hazmat employee training grant program.
 Sec. 19. Application of Federal, State, and local law to Federal contractors.
 Sec. 20. Financial responsibility.
 Sec. 21. Federally leased commercial motor vehicles.
 Sec. 22. Improvements to hazardous materials identification systems.
 Sec. 23. Continually monitored telephone systems.
 Sec. 24. Truck visibility.
 Sec. 25. Hazardous materials inspectors.
 Sec. 26. Shipper responsibility report.
 Sec. 27. Effective date.

SEC. 2. DEFINITIONS.

Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1802) is amended to read as follows:

SEC. 103. DEFINITIONS.

"For purposes of this title, the following definitions apply:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(2) COMMERCE.—The term 'commerce' means trade, traffic, commerce, or transportation within the jurisdiction of the United States (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

"(3) DIRECTOR.—The term 'Director' means the Director of the Federal Emergency Management Agency.

"(4) HAZARDOUS MATERIAL.—The term 'hazardous material' means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce.

"(5) HAZMAT EMPLOYEE.—The term 'hazmat employee' means a person who is employed by a hazmat employer and who in the course of his or her employment directly affects hazardous materials transportation safety as determined by the Secretary by regulation. Such term includes an owner-operator of a motor vehicle which transports in commerce hazardous materials. Such term includes, at a minimum, a person who is employed by a hazmat employer and who in the course of his or her employment—

"(A) loads, unloads, or handles hazardous materials;

"(B) reconditions or tests containers, drums, and packages represented for use in the transportation of hazardous materials;

"(C) prepares hazardous materials for transportation;

"(D) is responsible for the safety of the transportation of hazardous materials; or

"(E) operates a vehicle used to transport hazardous materials.

"(6) HAZMAT EMPLOYER.—The term 'hazmat employer' means a person—

"(A)(i) who transports in commerce hazardous materials,

"(ii) who causes to be transported or shipped in commerce hazardous materials; or

"(iii) who reconditions or tests containers, drums, and packages represented for use in the transportation of hazardous materials; and

"(B) who utilizes 1 or more of its employees in connection with such activity.

Such term includes an owner-operator of a motor vehicle which transports in commerce hazardous materials. Such term includes any department, agency, or instrumentality of the United States, a State, a political subdivision of a State, or an Indian tribe engaged in an activity described in subparagraph (A)(i), (A)(ii), or (A)(iii).

"(7) IMMINENT HAZARD.—The term 'imminent hazard' means the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health or the environment may occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.

"(8) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village but not including any Alaska Native regional or village corporation)—

"(A) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

ceeding on the feasibility, necessity, and safety benefits of requiring carriers involved in the hazardous materials transportation industry to establish continually monitored telephone systems equipped to provide emergency response information and assistance with respect to accidents and incidents involving hazardous materials. Additional objectives of such proceeding shall be to determine which hazardous materials, if any, should be covered by such a requirement and which segments of such industry (including persons who own and operate motor vehicles, trains, vessels, aircraft, and in-transit storage facilities) should be covered by such a requirement.

(b) **COMPLETION OF PROCEEDING.**—Not later than 30 months after the date of the enactment of this Act, the Secretary of Transportation shall complete the proceeding under this section and may issue a final rule relating to establishment of continually monitored telephone systems described in subsection (a).

SEC. 24. TRUCK VISIBILITY.

(a) **INITIATION OF RULEMAKING PROCEEDING.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation shall initiate a rulemaking proceeding on the need to adopt methods for making commercial motor vehicles or category of such vehicles more visible to motorists so as to reduce accidents, particularly at night, taking into consideration such factors as vehicle illumination and vehicle color.

(b) **COMPLETION OF PROCEEDING.**—The proceeding under this section shall be completed not later than 2 years after the date of the enactment of this Act.

(c) **COMMERCIAL MOTOR VEHICLE DEFINED.**—For purposes of this section, the term "commercial motor vehicle" means a commercial motor vehicle described in section 204(l) (A) or (C) of the Motor Carrier Safety Act of 1984 (49 U.S.C. App. 2503(l) (A) or (C)).

SEC. 25. HAZARDOUS MATERIALS INSPECTORS.

Each of the 10 regional offices of the Department of Transportation shall include at least 1 inspector of hazardous materials for enforcing the Hazardous Materials Transportation Act and the regulations issued thereunder.

SEC. 26. SHIPPER RESPONSIBILITY REPORT.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation shall transmit to Congress a report on—

(1) the safety benefits of a law which provides that if a person causes a hazardous material to be transported in bulk in commerce by a motor carrier, which is involved in a hazardous material incident and which has an unsatisfactory safety rating issued by the Secretary or which has a conditional safety rating issued by the Secretary which has been in effect for a period of more than 12 months, such person shall be liable for at least 50 percent of the costs, damages, and attorney's fees assessed against the motor carrier for any hazardous material incident involving such transportation;

(2) such other systems as the Secretary of Transportation may determine would assure responsible actions by a person who causes the transportation of hazardous material in bulk in commerce; and

(3) the safety benefits of a law which provides that the liability of the person or persons who caused such a shipment of hazardous materials may not be transferred by indemnification, hold harmless, or similar agreements.

SEC. 27. EFFECTIVE DATE.

(a) **GENERAL RULE.**—Except as provided in this Act, this Act (including the amendments made by this Act) shall take effect on the date of the enactment of this Act.

(b) **SAFETY PERMITS.**—Section 108 of the Hazardous Materials Transportation Act, relating to safety permits, shall take effect 2 years after the date of the enactment of this Act, except that the Secretary shall issue regulations necessary to carry out such section not later than 1 year after such date of enactment.

(c) **CONTINUATION OF EXISTING REGULATIONS.**—Any regulation or ruling issued before the date of the enactment of this Act pursuant to the Hazardous Materials Transportation Act and any authority granted under such a regulation shall continue in effect according to its terms until repealed, terminated, amended, or modified by the Secretary of Transportation or a court of competent jurisdiction.

BACKGROUND AND NEED

The Hazardous Materials Transportation Act (HMTA) has not been substantially revised since its enactment in 1975. The Act

vests primary authority for its implementation and the regulation of hazardous materials transportation in the Secretary of Transportation. The Research and Special Programs Administration of the Department of Transportation carries out the administration of these responsibilities.

H.R. 3520, as reported by the Committee, represents key new policy initiatives by the Federal Government in the regulation of the transportation of hazardous materials.

During the last decade, there has been a rising crescendo of cries for reform of the HMTA. The need for reform was firmly articulated in a report issued by the Office of Technology Assessment in 1986. H.R. 3520 is intended to make some of the more important reforms.

Generally, the bill establishes more defined roles for the Federal government and the state governments in certain aspects of regulation. Expansion of training requirements and improved opportunities for training are mandated by the legislation. Modest but important grant programs are established to assist state and local governments in carrying out training for emergency preparedness planning and emergency response. Costs of the grant programs are covered by registration fees payable by a wide and varied segment of the transportation industry.

Finally, H.R. 3520 initiates an examination of methods to improve emergency response from the perspectives of individual responders and public safety. In taking this and the other initiatives, the Committee is continuing its quest to enhance safety in the transportation of hazardous materials.

SELECTED PROVISIONS

I. Federal and State Roles

The bill adjusts the regulatory relationship between all levels of state and local government and the Federal government. Prospectively, the Federal government would regulate exclusively certain areas of the transportation of hazardous materials. State entry into these areas could occur only where the Federal government does not address a specific aspect of the covered areas and the Federal government permits it. Areas falling within this new scheme are set forth in section 3 and are designated as section 105(b)(4) of the Act.

Most importantly, it should be noted that states may maintain and enforce laws, regulations, rules, standards or orders that are the same as their Federal counterparts. There is some concern that this mandate may mean that the state law must mirror the Federal statute verbatim. It does not mean that. It means the state law must have the same effect as the Federal law. For example, a state having adopted the Federal regulations as state law obviously is in concert with this provision. If the state changes the wording of the Federal regulation but not the meaning, the state regulation will stay in effect. However, any state law or regulation mandating something different than the Federal law would be subjected to a preemption challenge. Anything in addition to Federal law would have to meet the requirements of new subsection 105(b)(3).

In the important area of highway routing, the new scheme specifies that the Federal government is solely responsible for establishing standards which must be followed by state governments in designating highway routes, limitations, and restrictions. It is anticipated that this will be implemented in true partnership fashion.

The bill gives policy direction for establishing standards to maintain good commercial transportation arteries for hazardous materials. At the same time, it recognizes the state interest in designating highways, along with reasonable limitations and restrictions that might pertain to highway use, especially as the latter may relate to public safety. Thus, it is understood that certain reasonable use restrictions might be imposed to minimize risk to the public based upon grave consequences to public safety absent such limitations or restrictions. Conceivably, these consequences could result from purely local circumstances and conditions.

The legislation requires the states to consider certain factors in developing route designations, limitations, and restrictions. The issue of alternate routes would certainly be a consideration where the state is restricting or limiting use of a certain designated route for motor carrier transportation. The state must provide an alternate route that is reasonable, safe, and provides through transportation.

This process will also factor in delays of transportation. Here, the process must weigh the state's designations on a basis of reasonableness and whether the designation results in delays that are not burdensome to commerce and are designations that are critical to the safety of the public.

In the area of general preemption, which is set forth in Section 13, the Committee has adopted language which seeks to clarify the current preemption process. It does so by more clearly identifying the standards against which a determination of preemption is made. Those standards are now reflected in Court decisions and they are documented in the precedents established in administrative rulings issued by the Department. Currently, the Act utilizes the inconsistency standard with no statutory definition of inconsistency. This new clarity in the standard included in H.R. 3520 should enhance the process by which a determination of preemption is made. The bill also retains the current waiver provisions. This new preemption process does not apply to those areas subject to preemption in new subsections 105(b)(4) and 105(c).

There is another provision in the bill that deals with the question of uniformity. Section 17 establishes a broad based working group for the purpose of establishing uniform procedures and forms for state permitting or registration purposes, and for establishing base state filing. It should be strongly noted that this does not refer to or affect any of the other preemption sections in the legislation. This section addresses administrative functions that would accompany any state registration or permitting requirements. The purpose is to devise ways to save money by cutting or minimizing any costs that are associated with any such programs. It follows a method previously carried out by the Department and the states in the areas of fuel tax payments and payment of motor vehicle registration fees. Here, it differs in that the Secretary of Transportation is given authority to implement the recommendations of the work-

ing group established under the bill within a reasonable time after the recommendations of the working group have been submitted to the Secretary.

II Training

Repeatedly during the hearings, the Committee was asked to amend the law to provide for training both in the private sector and the public sector. Sections 4, 7, and 18 of the bill were crafted to respond to those requests. Section 4 of the bill requires the Secretary to issue training requirements for employees of carriers and shippers of hazardous materials. Employers will be required to certify that employees have been trained in their area of responsibility (i.e. loading, unloading, handling, storing, and transportation) and in emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials.

The Committee recognizes that there are problems unique to transporting hazardous materials in mountainous regions, such as the Rocky Mountains. Driving in the mountains can be treacherous for even the most experienced drivers. For that reason, the Committee believes it is essential that training be given to all truck drivers who operate motor vehicles used to transport hazardous materials over dangerous mountain routes.

The Committee acknowledges that commercial drivers license requirements, currently being phased in around the nation, require basic knowledge of mountain driving skills. The Committee encourages the Secretary to review the efficacy of these requirements and, if he deems necessary, recommend additional training requirements regarding the special factors particular to safe transportation of hazardous materials in mountainous regions.

With respect to certification requirements, the bill is silent on whether or not an employee must meet an objective standard in order to qualify for his or her employment. In short, objective standards are left to the Secretary's discretion. The purpose of the training requirement is to make certain that employees are instructed upon and have knowledge of the pertinent safety regulations.

The Secretary is further required to consult with the Administrator of the Environmental Protection Agency (EPA) and the Secretary of the Department of Labor (DOL) to ensure that the training requirements do not conflict with requirements of the Occupational Safety and Health Administration of the DOL or the EPA requirements relating to hazardous waste operations. The Committee intends that nothing herein should affect the current authority of the Occupational Safety and Health Administration. Training is required to begin within six months of the date the regulations are issued. The Secretary is to establish in the regulations the date by which training must be completed. Employers must certify that their employees have been trained.

The Committee is well aware of the need for employee training. As part of that concern, it has created a grant program for this purpose. The program will be administered by the National Institute of Environmental Health Sciences of the Department of Health and Human Services. These grants would provide funds to nonprofit organizations with demonstrated expertise in implement-

ing and operating training programs for hazardous materials employees and to expand or modify those programs to comply with the curriculum to be established in conformance with Section 7 of the bill. Funding for these grants totals \$250,000 per fiscal year for six years.

One of the key issues raised in the hearings held by the Subcommittee on Surface Transportation was the training needs of public sector personnel who respond to accidents or incidents involving the transportation of hazardous materials, i.e. firefighters and police. The bill in Section 7 establishes a new program for public sector training and planning to be funded by grants to states. This new public sector planning and training grant program will be financed by funds derived from the new registration program contained in Section 5 of the bill. The state grant program will be funded at \$12.8 million per year with 75 percent of the grant money to be funneled to local entities. The federal share is 80 percent and states are required to certify that the money they currently expend on public sector training for response to hazardous materials accidents or incidents does not fall below the total level of such expenditures for the last two fiscal years, exclusive of federal funds.

The grant program involves an effort by several Federal agencies with the Secretary of Transportation making the ultimate decision on who receives grants. The Secretary is empowered to delegate responsibility for certain aspects of the program. The agencies eligible for a delegation are the Nuclear Regulatory Commission, the Department of Labor, the Department of Energy, the Department of Health and Human Services, the Environmental Protection Agency and the Federal Emergency Management Agency. To the fullest extent possible, delegation or delegations should reflect appropriate use of existing Federal, state and local roles and capabilities in place to deliver emergency programs. Program guidelines should be coordinated at a minimum with programs and agencies that currently provide federal funds to state and local governments for emergency preparedness and response. Delegation should maximize use of an existing system of records on emergency training and planning assistance and activities to provide accountability to the Secretary, the Congress and the public. Moreover, the delegation or delegations should be made in a manner to avoid duplication of efforts at the Federal level and to minimize costs to the program.

The training program is to be based on a curriculum of courses to be developed and updated by the Secretary in consultation with the other Federal agencies which comprise part of the National Response Team and which are involved in planning and training public sector employees to respond to hazardous materials accidents or incidents. The curriculum of courses to be developed are to minimize duplication of effort and expense and must be ready for use within two years after the bill is enacted.

In its efforts to minimize costs in implementation of training programs, the Committee believes that where possible the utilization of existing resources for emergency response training is critical. For example, the Department of Transportation's Test Center in Pueblo, Colorado currently provides a wide range of training facili-

ties and opportunities for both the public and private sectors. This facility is a national multi-modal transportation training center for hazardous materials responders. The facility offers classroom training and an extensive and unique simulation training program. Since 1985, more than 4,000 persons from both the public and private sectors have been trained at the Test Center. The Department has invested approximately \$100 million in developing the Test Center, which provides training through a private contractor. Intensive programs afford participants the opportunity to avail themselves of state-of-the-art training techniques. The Committee believes that training for emergency responders will be accomplished by encouraging the full utilization of facilities such as the Test Center and the coordinated use of other existing resources.

III. Registration

Section 3 of the bill contains a mandatory filing requirement for shippers and carriers engaged in one or more of four activities: transporting or causing to be transported highway route controlled quantities of radioactive materials; class A or B explosives or toxics by inhalation; tank operations which require placards; truckload, railload or containerload quantities of hazardous materials requiring placards; and large quantities of hazardous waste. The Secretary is given discretion to apply registration requirements to other persons involved in the transportation of hazardous materials. An annual registration fee ranging from \$250 to \$5,000 will be assessed on each registrant based on an evaluation of criteria list in the bill. These fees are designed to provide the financial base for the training grants to the public and private sectors, and for some of the other allied Federal activities carried out by the Federal agencies.

IV. Permits and Safety Ratings

The legislation develops other new initiatives. Two of them directly relate to the carriers, and, in particular, to motor carriers. The first initiative establishes a mandatory safety permit program for motor carriers that transport enumerated hazardous materials. The Secretary has the authority to expand the list of hazardous materials and the type of carriers that are subject to this provision.

Shippers will have a duty to use only permitted carriers for the transportation of the specified hazardous materials. Permits are subject to amendment, suspension, and revocation. Carriers not having permits will not be able to engage in transportation of any hazardous material for which a permit is required.

In another provision dealing with motor carrier operations, the Committee has concluded that any motor carrier having an unsatisfactory safety rating should not be allowed to engage in the transportation of hazardous materials for which a placard is required. This severe sanction is tempered by a delay in its imposition in order to allow the carrier to secure change in its rating. The bill also imposes a ban on Federal agencies from using carriers that have an unsatisfactory safety rating.

V. Identification and Communication

During its hearings, the Committee became increasingly aware of a need to review identification and communication procedures in

the transportation of hazardous materials with a view to improving them.

In response, the Committee has decided generally that more information is needed on methods to improve both of these functions. The Committee has provided for an extensive study by the National Academy of Sciences and a rulemaking proceeding to be conducted by the Department of Transportation. The rulemaking proceeding will concern ways to improve the current system of placarding and to determine methods for establishing and operating a central reporting system and computerized telecommunications data center. The National Academy of Sciences is to study the feasibility and necessity for establishment of the central reporting system and data center. Both the Academy and the Department will submit reports to Congress on the establishment of the central reporting system and data center. In addition, the Department is required to issue a final rule with respect to improvements in the placarding system within 30 months of the date of enactment.

A provision in section 22 requires the Committee of jurisdiction to hold hearings within 30 days after the submission of the report. Within 30 legislative days after completion of the hearings, the Committees are directed to report legislative recommendations to their respective houses of Congress. The Committee wishes to clarify that the requirement to "report legislative recommendations" does not require the Committees to take official action to send a bill to the floor of the House or the Senate. The requirement could be met by sending a formal message to the House and Senate leadership that no legislation is necessary. The Committee does not intend for this language to bind future Congresses to take specific action on legislation.

It is the expectation of the Committee, that the Department will also examine the possibility of updating its Emergency Guide Book by possibly assigning a four digit number to each material in the book instead of categorizing a number of products under one number. The Committee is interested in determining if this alternative identification method would be more effective in assisting emergency responders. The Committee would like solid reasons as to whether or not such a change should be implemented and whether there are any other changes that might improve the effectiveness of the Guide Book.

The Committee also wants the Department to examine the issue of whether or not more extensive telephone availability by carriers will enhance safety. The new law will require that transportation documents have a telephone number where shippers can be contacted on a continuous basis. The Committee has directed the Department to conduct a rulemaking proceeding on instituting a similar requirement for carriers.

The Committee believes that these actions will supply the information that is needed before it acts upon proposals to expand and to modify existing identification and communication requirements for carries and shippers.

VI Federal Contractors

The Committee inserted sections 19 and 21 in the bill in order to remove any doubt that Federal contractors are subject to the Haz-

ardous Materials Transportation Act and to the same state and local laws that apply to other shippers and carriers that are not operating pursuant to a contract with the Federal government. The Committee's position is that this simply restates existing law and that contentions to the contrary are incorrect. This view applies only with respect to transportation of hazardous materials, and it is not meant to nor should it be construed to apply elsewhere.

VII Financial Responsibility

The Committee has been aware for some time of a problem that exists in some of the Territories relating to the lack of availability of insurers to provide the \$5,000,000 minimum level of insurance required by the Motor Carrier Act of 1980 for transportation of hazardous materials.

Section 20 of the bill provides the Secretary, by regulation, to reduce the \$5,000,000 minimum requirement to an amount not less than the \$1,000,000 at the request of the chief executive officer of a territory, as long as the reduction will not adversely affect public safety and will prevent a serious disruption in transportation service, and the \$5,000,000 level of insurance is not readily available.

VIII Savings Clause

The bill provides for the continuing effect of existing DOT regulations, rulings or authorities granted by the Secretary under the Hazardous Materials Transportation Act. This provision, in addition to maintaining the continuing validity of the Hazardous Materials Regulations in 49 CFR Parts 106-189, maintains the existence of exemptions, approvals, certificates of competent authority, and inconsistency rulings that may have been granted pursuant to the regulations until those decisions or regulations are repealed, terminated, amended or modified by the Secretary or a court of competent jurisdiction.

IX Inhalation Hazards

During its hearings on the reauthorization of the Hazardous Materials Transportation Act (HMTA), the Committee considered a proposal of the Silicon Valley Toxics Coalition on the need to establish strict new regulations on the transportation of materials toxic by inhalation. The Committee is very concerned with the proper classification and packaging of materials extremely toxic by inhalation. It is also aware of the Department's efforts to finalize a rule-making on performance oriented packaging standards in Docket HM-181. That proceeding deals in part with the classification and packaging of materials that are extremely toxic by inhalation. The Committee will continue to monitor that proceeding in this area before considering any further legislative action. However, the Committee wishes to underscore its desire that the Department complete that proceeding, or the relevant parts of that proceeding in the near future.

APPENDIX E

104TH CONGRESS }
1st Session }

SENATE

{ REPORT
104-176

INTERSTATE COMMERCE COMMISSION
SUNSET ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

together with

ADDITIONAL VIEWS

on

S. 1396



NOVEMBER 21, 1995.—Ordered to be printed
Filed, under authority of the order of the Senate of November 20, 1995

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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Calendar No. 247

104TH CONGRESS }
1st Session }

SENATE

{ REPORT
104-176

INTERSTATE COMMERCE COMMISSION SUNSET ACT OF
1995

NOVEMBER 21, 1995.—Ordered to be printed

Filed, under authority of the order of the Senate of November 20, 1995

Mr. PRESSLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1396]

The Committee on Commerce, Science, and Transportation to which was referred the bill (S. 1396) to amend title 49, United States Code, to provide for the regulation of surface transportation, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

This legislation is in response to the Fiscal Year (FY) 1996 Budget Resolution which assumes the elimination of the Interstate Commerce Commission (ICC) and the FY 1996 DOT Appropriations bill, H.R. 2002, which provides no funding for the ICC effective December 31, 1995. Prior to the Committee's approval of S. 1396 on November 9, 1995, H.R. 2002 had not been signed into law. H.R. 2002 has since been signed by the President (P.L. 104-50).

S. 1396, as reported, would sunset two federal agencies, the ICC and the Federal Maritime Commission (FMC). The ICC would terminate effective January 1, 1996, and the FMC would terminate one year later, January 1, 1997. The bill provides that, upon enactment, obsolete or unnecessary ICC regulatory functions would be

repealed and residual functions would be transferred partly to a newly established independent Intermodal Surface Transportation Board (Board) within the U.S. Department of Transportation (DOT) and partly to the Secretary of Transportation (Secretary). When the FMC sunsets, its remaining functions would be transferred to the new Board.

The bill also significantly reduces regulation of surface transportation industries in this country. It sorts through the panoply of laws currently administered by the ICC and repeals or modernizes those that have become outdated. In the process, the bill revamps subtitle IV of title 49 of the United States Code, commonly known as the Interstate Commerce Act (ICA), by dividing it into two parts:

Part A (comprised of revised chapters 101 through 119 of title 49), which contains the provisions applicable to transportation by rail or pipeline (other than oil, gas, or water pipelines), and

Part B (new chapters 113 through 149 of title 49), which contains the provisions applicable to the trucking, intercity bus, domestic water carriage, and transportation intermediary (broker and freight forwarder) industries.

Part A would be administered by the Board. Part B would be administered by the Secretary except for those provisions that are more adjudicatory in nature, which would be administered by the Board.

As reported, the bill would authorize appropriations of \$8.4 million for the Board for FY 1996, and \$12 million in each of FYs 1997 and 1998. The Committee notes the appropriation levels for FY 1997 and 1998 were set prior to accepting an amendment to sunset the FMC. Therefore, amended authorization levels will be needed to ensure the transferred FMC functions can be carried out effectively.

BACKGROUND AND NEEDS

Established by the Act to Regulate Commerce in 1887, the ICC is the oldest independent regulatory agency. It originally was created to protect shippers from the monopoly power of the railroad industry. Between 1840 and 1880, the U.S. railroad network grew from 2,800 to 93,000 miles. This boom brought indiscriminate construction, market manipulation, rate abuses, and discriminatory practices against certain types of freight customers and passengers. In some areas, rail monopolies were able to direct the fate of communities, shippers, and entire industries.

Farmers and consumers demanded rate controls, and merchants and shippers demanded equal treatment with their competitors. Congress responded by enacting a ten-page bill. It stipulated that all rates be "reasonable and just" and prohibited certain railroad practices, such as rate discrimination, price fixing, and rebating. A five-member Commission was set up to administer the Act.

Various subsequent Acts through 1920 broadened and strengthened the ICC's regulatory authority over railroads. The ICC's regulatory authority also expanded to other modes, including pipeline transportation by the Hepburn Act of 1906. Responding to railroad complaints about unfair competition, Congress brought the nascent truck and bus industries under the ICC's regulatory authority by the Motor Carrier Act of 1935. In 1940, inland and coastal water

carriers were brought under the jurisdiction of the ICC, which then consisted of eleven members. At one point, the ICC even regulated telegraph, telephone, cable and radio communications, as well as standard time.

By the 1960's, the ICC's regulatory structure was viewed as unduly burdensome and restrictive and the federal government moved to create new agencies to deal with emerging transportation problems. In 1967, the DOT was created and virtually all of the ICC's safety oversight functions were transferred to the new agency. However, economic regulation remained at the ICC. By 1970, in spite of the ICC's continued broad regulatory powers, six major northeastern railroads and one midwestern line were bankrupt. Bankruptcies continued throughout the rail industry, including the collapse of more Northeastern railroads which ultimately resulted in the creation of Conrail. In 1977, citing the ineffectiveness of the ICC, President Carter created a task force that was charged with streamlining the ICC and reducing regulation.

Since the mid-1970's, the following laws have been enacted which have contributed to the substantial deregulation of transportation industries:

RAILROAD INDUSTRY

The first major rail regulation reform legislation, The Railroad Revitalization and Regulatory Reform (4-R) Act of 1976, provided (as a national policy goal) for the earnings of "adequate revenues" by rail carriers as functioning private sector companies. This was to be accomplished by providing increased flexibility for rail carriers to raise or lower rates to conform to market forces.

The Staggers Rail Act of 1980 provided far-reaching comprehensive reform, providing the rail industry with many of the same market freedoms available to other competitive industries. The Staggers Act provided for increased competition by removing anti-trust immunity over collective ratemaking, reducing rail rate regulation, and easing the way for mergers. The Staggers Act is considered the most successful rail transportation legislation ever produced, resulting in the restoration of financial health to the rail industry.

MOTOR CARRIER INDUSTRY

The Motor Carrier Act of 1980 promoted greater rate setting flexibility and began to ease entry restrictions in the trucking industry. As a result, 25,000 new carriers started up between 1982 and 1990.

The Household Goods Transportation Act of 1980 promoted competition by increasing carrier freedom to set prices and quality options. Consumers appear to have been well-served by increased competition. Since 1980, complaints to the ICC concerning household goods carriers have dropped each year.

The Bus Regulatory Reform Act of 1982 encouraged industry entrance and growth, allowed easier abandonment of unprofitable routes, and increased flexibility in rate setting. Deregulation of the bus industry resulted in an increase in small companies in operation. However, public preference for private automobile travel, competitive lower cost fares made available by airline deregulation,

and Amtrak subsidization together have resulted in discontinuation of regular-route bus service to many communities.

The Surface Freight Forwarder Deregulation Act of 1986 further deregulated the non-household goods segment of the motor carrier industry. The transportation intermediary sector has flourished. By 1991, the ICC had licensed more than 7,000 brokers, up from the 50 authorized prior to enactment of the new law.

The Negotiated Rates Act of 1993 provided a mechanism to resolve the on-going undercharge crisis which arose when bankruptcy trustees or receivers demanded payments from shippers for the difference between a negotiated rate for transportation services which were paid in full by a shipper and the higher tariff rate on file at the ICC.

In further response to the undercharge problem, the Trucking Industry Regulatory Reform Act (TIRRA) of 1994 reduced tariff filing requirements in the motor carrier industry by eliminating filed tariff requirements for independently set rates. This reduced paperwork burdens and precluded future undercharge claims for that category of traffic. Further, TIRRA expanded the ICC's exemption authority to embrace many aspects of the trucking industry.

In view of the deregulation legislation described above and the resultant decline in ICC responsibilities, Congress cut the number of ICC Commissioners from 11 to 5 in 1985. Since 1980, the agency's appropriations have dropped from \$80 million to \$30.3 million in the FY 1995 DOT Appropriations bill. During that same period of time, the ICC's staffing has dropped from nearly 2,000 employees to approximately 350. Today, approximately 300 employees remain at the ICC.

Even with the considerable deregulation of the surface transportation industries, the ICC continues to maintain a formidable regulatory presence. The ICC determines policy through its rulemaking and adjudicative proceedings to ensure the effective administration of the Interstate Commerce Act (ICA), related statutes, and regulations. The ICC maintains jurisdiction over the rail industry, certain pipelines, barge operators, bus lines, freight forwarders, household goods movers and approximately 60,000 "for-hire" motor carriers.

LEGISLATIVE HISTORY

S. 1396, the Interstate Commerce Commission Sunset Act of 1995, was introduced by Chairman Pressler and Senator Exon on November 3, 1995. As stated earlier, this legislation is in direct response to the FY 1996 Budget Resolution which assumes the elimination of the ICC and the FY 1996 DOT Appropriations bill, H.R. 2002, which provides no funding for the ICC effective December 31, 1995. Specifically, the Conference Report to H.R. 2002, P.L. 104-50, provides \$13,379,000 for the first quarter of FY 1996 for salaries and expenses as well as severance and closing costs of the ICC and \$8,421,000 is appropriated to an unspecified successor agency.

During an open executive session on November 9, 1995, the full Committee reported favorably an amendment in the nature of a substitute to S. 1396. The bill, as reported, identifies which of the ICC's functions should continue to be carried out, and by which agency or agencies, within the constraints of the funding approved. The Committee also approved two amendments to the substitute

amendment. One amendment, offered by Senator Burns, would allow an individual with a background in "agriculture" to be appointed to the Board. The other amendment, offered by Chairman Pressler, and Senators Hollings, Lott, Breaux, and Exon, would sunset the FMC effective January 1, 1997, at which time two members with professional standing and demonstrated knowledge in the fields of maritime transportation or its regulation would be added to the Board.

SUMMARY OF MAJOR PROVISIONS

As reported, the bill continues the deregulation theme of the past 15 years by providing further regulatory reductions in the surface transportation industries. Overall, the bill is designed to repeal unnecessary regulations and authorize the transfer of residual functions to DOT. Many broader transportation policy proposals viewed by the Committee to be re-regulatory were not included in this bill. The Committee intentionally limited the bill to matters related to sunsetting the ICC and FMC and transferring essential functions to a successor.

The bill as reported includes the following major provisions:

1. **Governmental Efficiency and Savings.**—The bill would reduce the Federal bureaucracy by eliminating two free-standing government agencies—the ICC and FMC. Numerous unnecessary or obsolete regulations would be repealed and residual functions would be redistributed within the DOT. It creates an independent "Intermodal Surface Transportation Board" (Board) to administer regulations retained over rail carriers, certain pipeline carriers, and the maritime, and domestic water carrier industries. The Board also would maintain limited adjudicatory responsibilities over the motor carrier, freight forwarder, transportation broker, and intercity bus industries. All non-adjudicatory functions of these latter industries would be transferred to the Secretary.

The Committee notes the increasing emphasis on intermodalism and providing seamless transportation via rail, motor, and water modes in the transportation industry. The Committee believes the remaining Federal government oversight of these transportation modes should be housed within a single agency with the expertise and perspective to view the transportation industry as increasingly intermodal. The Committee believes the consolidation of remaining ICC and FMC functions in the Board accomplishes this goal.

By placing the Board within DOT, it would be relieved of separate administrative costs currently borne by both the ICC and the FMC. The Committee intends that, given the very limited appropriations level for the Board and the numerous responsibilities assigned to the Board, the costs of these administrative functions would be absorbed by DOT. The Board would be instructed to carry out within six months a study to determine the authority necessary to assess fees to cover the costs incurred to carry out the Board's functions.

The Committee understands that upon enactment of this bill, the transferor agency, the ICC, shall determine which functions to be transferred to the Secretary are new functions to DOT and which functions are currently performed by DOT. The DOT would then have to agree with the ICC as to which functions transfer and

which do not. Any disagreements would be resolved by the Office of Management and Budget. Since the bill makes no change to current civil service severance personnel laws, the transfer of personnel will occur under existing rules. ICC personnel that perform new functions transferred to DOT have transfer rights. ICC personnel that perform functions which are not transferred to DOT, such as motor carrier dispute resolution, have no transfer rights.

The Committee intends that any personnel and functions transferred to DOT outside the Board should be integrated and performed within DOT's existing FY 1996 funding allocation. The Committee expects that any ICC personnel transferred to DOT could be funded from the transfer of existing fees derived from transferred ICC functions. The FY 1996 DOT Appropriations Bill, P.L. 104-50, permits the Secretary to utilize any fees collected to fund ICC personnel transferred to DOT. This bill provides the Secretary similar authority.

The ICC has informed the Committee that, upon preliminary review of the motor carrier licensing, insurance, data collection and NAFTA enforcement functions transferred to DOT in this bill, it expects that approximately 60 ICC personnel will be transferred to DOT (separate from the Board). These are the employees that would perform functions new to DOT. The ICC estimates that these personnel will result in a cost of \$3.743 million for the remainder of FY 1996 (annualized cost of \$5 million). The ICC estimates that continued fees in FY 1996 will total \$5.27 million.

2. Rail Transportation.—Beyond weeding out outdated and unnecessary provisions, the bill generally does not attempt to substantively redesign rail regulation. Rather, it would preserve the careful balance put in place by the 4R Act and the Staggers Act that led to a dramatic revitalization of the rail industry while protecting significant shipper and national interests.

Outdated Regulatory Provisions. The bill would eliminate many outdated, unnecessary, and burdensome regulatory requirements and restrictions on the rail industry. These include, for example, the elimination of all regulation of rail passenger transportation, all tariff filings, tariffs for non-agricultural commodities, special provisions favoring recyclable commodities, and restrictions against carriers transporting their own commodities.

The bill would also eliminate Federal certification and review procedures for State regulation of intrastate rail transportation. However, nothing in this bill should be construed to authorize States to regulate railroads in areas where Federal regulation has been repealed by this bill. Further, the Committee intends that those States regulating intrastate rail transportation continue to be required to regulate only in a manner consistent with the ICA. The railroad system in the United States is a nationwide network. The hundreds of rail carriers that comprise the railroad industry rely on a nationally uniform system of economic regulation. Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the "seamless" service that is essential to its shippers and would weaken the industry's efficiency and competitive viability.

National Rail Network.—The bill would retain those provisions needed to preserve an efficient national rail network comprised of

numerous individual carriers. These include Federal regulatory oversight of line constructions, line abandonments, line sales, leases, and trackage rights, mergers and other consolidations (under a broad public interest standard and with ongoing regulatory oversight), car supply and interchange, antitrust immunity for certain collective activities (including pooling of equipment and services), competitive access, financial assistance, feeder line development, emergency service orders, and recordation of equipment liens.

Shipper Protections.—In reviewing the ICA, the Committee is impressed with the positive effects rail deregulation has had on the railroad industry since enactment of the Staggers Act and has carefully avoided alteration of the fundamental premises of the Staggers Act in this bill. At the same time, however, the Committee is aware captive shippers—particularly grain shippers whose traffic originates from country elevators—continue to need protections under the ICA.

The bill as reported would retain provisions that are necessary to protect rail shippers. These include the common carrier obligation, regulatory oversight of the reasonableness of rail practices, maximum rate regulation for captive traffic, advance notice of rate increases, and rate tariffs for agricultural commodities and fertilizer.

The Committee believes the common carrier obligation is particularly critical, especially in light of the needs of grain shippers and others who continue to experience difficulties in obtaining rail cars and service. According to a September 1995 report by the U.S. Department of Agriculture entitled “Assessing the Impact of Railcar Availability on Grain Prices,” rail car shortages lower farm prices and reduce the competitiveness of U.S. grain exports.

Rate Reasonableness.—The bill includes several new provisions regarding the handling of challenges to the reasonableness of rates charged on captive traffic, to ensure that such cases are resolved more expeditiously. The Committee is concerned non-coal shippers, particularly grain shippers and smaller volume bulk shippers, have been deterred from utilizing the rate reasonableness provisions in the ICA in part because of the complex nature of the full stand-alone cost presentation adopted by the ICC and the resulting expenses associated with pursuing that test.

The bill would require the Board to complete the pending Non-Coal Rate Guidelines proceeding, ICC Docket Ex Parte No. 347 (Sub-No. 2), establishing a simplified method to be used where a full stand-alone cost presentation is impractical, within one year. Also, the bill instructs the Board to adopt procedures that would avoid undue delay in both the discovery and evidentiary phases of rate cases and to otherwise expedite proceedings. The bill would require the Board to establish procedures, within 6 months, for expeditiously processing all rate cases. It would require the Board to decide individual rate complaints within 6 months after the close of the administrative record in cases in which a stand-alone cost presentation is made, and within 3 months after the close of the record in cases using a simplified evidentiary presentation.

The Committee intends the simplified methodology directed to the Board to complete would apply to cases in which the full stand-