The original documents are located in Box D18, folder "House Speech Bill 5401, May 6, 1965" of the Ford Congressional Papers: Press Secretary and Speech File at the Gerald R. Ford Presidential Library.

Lou Berry says Bill clearing House today w/o much opposition

Bill 5401 (to House floor today May 6)

result of several year's effort to stop illegal trucking..."grey area" operators...these reportedly take $1 billion a year in business from regulated truckers.

Bill will slow down or stop illegal trucking by:

1. Providing enforeeement agreements between federal govt. and the states.
2. Increase civil forfeiture from $250 to $500
3. Permit persons or companies damaged by "grey area" operations to take violators into district courts.

(Private Carrier Conference opposes court angle...wants to continue present method of having ICC control illegal trucking)

Bill 5401

FYI most farm commodities excempt from regulations, but court decisions have made a hodge-podge of rules....appears that Congress won't do anything now...ICC reportedly handling situation in good shape)

STAY AWAY FROM DE-REGULATION OF GRAIN RATES *** VERY CONTROVERSIAL

89TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 253

INTERSTATE COMMERCE ACT AMENDMENTS

APRIL 22, 1965.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HARRIS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 5401]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 5401) to amend the Interstate Commerce Act so as to strengthen and improve the national transportation system, 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:

That subsection (f) of section 205 of the Interstate Commerce Act (49 U.S.C. 305(f)) is amended by inserting after the second sentence thereof the following new sentence: "In addition, the Commission is authorized to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation."

SEC. 2. Subsection (b) of section 202 of the Interstate Commerce Act (49 U.S.C. 302(b)) is amended by inserting "(1)" immediately after "(b)" and by adding at the end thereof the following:

"(2) The requirement by a State that any motor carrier operating in interstate or foreign commerce within the borders of that State register its certificate of public convenience and necessity or permit issued by the Commission shall not constitute an undue burden on interstate commerce provided that such registration is accomplished in accordance with standards, or amendments thereto, determined and officially certified to the Commission by the national organization of the State commissions, as referred to in section 205(f) of this Act, and promulgated by the Commission. As so certified, such standards, or amendments thereto, shall be promulgated forthwith by the Commission and shall become effective five years from the date of such promulgation. As used in this paragraph, 'standards or amendments thereto' shall mean specification of forms and procedures required to evidence the lawfulness of interstate operations of a carrier within a State by (a) filing and maintaining current records of the certificates and permits issued by the Commission, (b) registering and identifying vehicles as operating under such certificates and permits, (c) filing and maintaining evi-

dence of currently effective insurance or qualifications as a self-insurer under rules and regulations of the Commission, and (d) filing designations of local agents for service of process. Different standards may be determined and promulgated for each of the classes of carriers as differences in their operations may warrant. In determining or amending such standards, the national organization of the State commissions shall consult with the Commission and with representatives of motor carriers subject to State registration requirements. To the extent that any State requirements for registration of motor carrier certificates or permits issued by the Commission impose obligations which are in excess of the standards or amendments thereto promulgated under this paragraph, such excessive requirements shall, on the effective date of such standards, constitute an undue burden on interstate commerce. If the national organization of the State commissions fails to determine and certify to the Commission such standards within eighteen months from the effective date of the paragraph, or if that organization at any time determines to withdraw in their entirety standards previously determined or promulgated, it shall be the duty of the Commission, within one year thereafter, to devise and promulgate such standards, and to review from time to time the standards so established and make such amendments thereto as it may deem necessary, in accordance with the foregoing requirements of this paragraph. Nothing in this paragraph shall be construed to deprive the Commission, when there is a reasonable question of interpretation or construction, of its jurisdiction to interpret or construe certificates of public convenience and necessity, permits, or rules and regulations issued by the Commission, nor to authorize promulgation of standards in conflict with any rule or regulation of the Commission."

SEC. 3. Subsection (h) of section 222 of the Interstate Commerce Act (49 U.S.C. 322(h)) is amended by striking out the words "shall forfeit to the United States the sum of $100 for each such offense, and, in case of a continuing violation, not to exceed $50 for each additional day during which such failure or refusal shall continue" in the first sentence therein and by inserting in lieu thereof the following: "or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1) shall forfeit to the United States not to exceed $500 for each such offense, and, in case of a continuing violation not to exceed $250 for each additional day during which such failure or refusal shall continue."

SEC. 4. Subsection (b) of section 222 of the Interstate Commerce Act (49 U.S.C. 322(b)) is amended to read as follows:

"(b) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any lawful rule, regulation, requirement, or order promulgated by the Commission, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply for the enforcement thereof to the district court of the United States for any district where such motor carrier or broker operates. In any proceeding instituted under the provisions of this subsection, any person, or persons, acting in concert or participating with such carrier or broker in the commission of such violation may without regard to his or their residence be included, in addition to the motor carrier or broker, as a party, or parties, to the proceeding. The court shall have jurisdiction to enforce obedience to any such provision of this part, or of such rule, regulation, requirement, order, term, or condition by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives, and such other person, or persons, acting in concert or participating with such carrier or broker, from further violation of such provision of this part, or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto. Process in such proceedings may be served upon such motor carrier, or broker, or upon such person, or persons, acting in concert or participating therewith in the commission of such violation, without regard to the territorial limits of the district or of the State in which the proceeding is instituted."

SEC. 5. (a) Subsection (b) of section 222 of the Interstate Commerce Act (49 U.S.C. 322(b)) (as amended by section 4 of this Act) is further amended by inserting "(1)" immediately after "(b)" and by adding at the end thereof the following:

"(2) If any person operates in clear and patent violation of any provisions of section 203(c), 206, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ

of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as of right in any such action. The party who or which prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive, or other process is issued should it later be proven unwarranted by the facts and circumstances. Nothing in this paragraph shall be construed to deprive the Commission of its jurisdiction to interpret or construe certificates of public convenience and necessity, permits, or rules and regulations issued by the Commission."

(b) Subsection (b) of section 417 of the Interstate Commerce Act (49 U.S.C. 1017(b)) is amended by inserting "(1)" immediately after "(b)" and by adding at the end thereof the following new paragraph:

"(2) If any person operates in clear and patent violation of section 410 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as of right in any such action. The party who or which prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive or other process is issued should it later be proven unwarranted by the facts and circumstances. Nothing in this paragraph shall be construed to deprive the Commission of its jurisdiction to interpret or construe permits or rules and regulations issued by the Commission."

SEC. 6. (a) Paragraph (2) of section 204a of the Interstate Commerce Act (49 U.S.C. 304a) is amended to read as follows:

"(2) For recovery of reparations, action at law shall be begun against common carriers by motor vehicle subject to this part within two years from the time the cause of action accrues, and not after, and for recovery of overcharges, action at law shall be begun against common carriers by motor vehicle subject to this part within three years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice."

(b) Section 204a of the Interstate Commerce Act (49 U.S.C. 304a) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and by inserting immediately after paragraph (4) thereof the following:

"(5) The term 'reparations' as used in this section means damages resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 216(e) of this part, finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial."

SEC. 7. (a) Paragraph (2) of section 406a of the Interstate Commerce Act (49 U.S.C. 1006a) is amended to read as follows:

"(2) For recovery of reparations, action at law shall be begun against freight forwarders subject to this part within two years from the time the cause of action accrues, and not after, and for recovery of overcharges, action at law shall be begun against freight forwarders subject to this part within three years from the

time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the freight forwarder within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the freight forwarder to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice."

(b) Section 406a of the Interstate Commerce Act (49 U.S.C. 1006a) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and by inserting immediately after paragraph (4) thereof the following:

"(5) The term 'reparations' as used in this section means damages resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 406 of this part, finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial."

SEC. 8. (a)(1) Part III of the Interstate Commerce Act is amended by inserting immediately after section 312 the following new section:

"REVOCATION OF CERTIFICATES AND PERMITS

"SEC. 312a. (1) Certificates and permits shall be effective from the date specified therein, and shall remain in effect until suspended or revoked as provided in this section.

"(2) Any certificate or permit issued under this part may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may, upon complaint, or on the Commission's own initiative, after reasonable notice and opportunity for hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to engage in, or to continue to engage in, the operation authorized by such certificate or permit.

"(3) The Commission shall, upon complaint or on its own initiative, after reasonable notice and opportunity for hearing, in any case of willful failure to engage in any operation authorized by any such certificate for a period of three or more years (whether occurring before or after the date of enactment of this section), revoke the part of such certificate authorizing such operation."

(2) The table of contents in section 301 of the Interstate Commerce Act, as amended (49 U.S.C. 901), is amended by inserting immediately after and below

"Sec. 312. Transfer of certificates and permits."

the following:

"Sec. 312a. Revocation of certificates and permits.".

(b) Section 309 of the Interstate Commerce Act is further amended by adding at the end thereof the following:

"(h) No person shall be required to obtain a certificate under subsection (a) in order to perform transportation subject to the provisions of this part over any route or routes or between any ports with respect to which no such certificate is in effect, and on and after the effective date of this subsection no such certificates shall be issued to perform such transportation over any route or routes or between any ports with respect to which no such certificate is then in effect. Any person performing such transportation under the provisions of this subsection shall be deemed to be a common carrier by water for the purposes of this part. The Commission may not suspend any initial schedule of rates filed by any person performing transportation under the provisions of this subsection for which such person has never had rates on file with the Commission."

SEC. 9. The amendments made by this Act shall take effect on the ninetieth day after the date of enactment of this Act.

PURPOSE OF THE BILL

The purpose of this bill, H.R. 5401, here reported, is to strengthen and improve our Nation's common carrier surface transportation system through amendments to the Interstate Commerce Act to—

1. Provide for Federal-State cooperation in the motor carrier field through (sec. 1) agreements for the enforcement of State and Federal economic and safety laws and regulations and through (sec. 2) establishing standards for the registration within the several States of Federal certificates and permits.

2. Aid enforcement in the motor carrier field by extending (sec. 3) the civil forfeiture provisions of the act and increasing the amounts of maximum forfeiture, by assisting (sec. 4) the Commission to obtain service of process, and by permitting (sec. 5) any persons injured through certain violations of certain operating authority requirements of the act (applicable to freight forwarders as well) to apply directly to the courts for injunctive relief.

3. Restore a procedure permitting shippers to recover reparations from motor carriers (sec. 6) and freight forwarders (sec. 7).

4. Encourage the development of water transportation upon inland waterways where no certificate may be in effect by providing (sec. 8) that any water carrier freely without a certificate can enter into the transportation of any goods over certain water routes, though its rates would be subject to regulation.

BACKGROUND AND NEED FOR LEGISLATION

The instant bill is the culmination of some years' consideration by the committee of problems in the surface transportation field and of various legislative proposals advanced for meeting them. These problems generally seem to stem from the basic fact that whereas over the years the Nation's demand for transportation service has steadily grown, since World War II the position of common carriers in our total national transportation system steadily has worsened.

In the first years after the war this fact was evident only in relative terms; that is, while all forms of transportation shared in the increased volume of traffic, common carriers did not participate proportionately in this increased total volume. In more recent years it appears that there has been an erosion even in absolute terms in their participation in the transportation of total traffic.

One factor leading to this erosion of traffic in the railroad and motor common carrier fields has been the increase in illegal for-hire trucking; that is, the transportation of nonexempt commodities on a for-hire basis by persons not having authority to do so from the Interstate Commerce Commission or a State regulatory commission.

This situation has been of continuing concern to the Congress and to your committee.

It was one of the considerations giving rise to the Transportation Act of 1958.[1] It was commented upon in President Kennedy's transportation message in 1962 and the subject of extensive hearings in the 87th Congress in the Senate committee on such proposed legislation as S. 2560 and in this committee of the House on H.R. 11583, H.R. 11584, and other related bills. It was further considered in the 88th Congress by this committee in its hearings on numerous transportation bills, referred to by President Johnson in his letter of January 1964, and taken up in a bill, H.R. 9903, reported by this committee in February 1964.[2]

Unfortunately illegal for-hire trucking continues to be a significant problem today. Authoritative statistics about the scope of such unlawful activities are difficult to obtain, but from enforcement

[1] See H. Rept. 1922, accompanying H.R. 12832, 85th Cong.
[2] For history between 1958 and 1964 see H. Rept. 1144, accompanying H.R. 9903, 88th Cong.

activity at both Federal and States levels it appears million of tons of freight are hauled illegally every year and such hauls are diverting potential revenues of probably over a billion dollars a year from regulated carriers.

This illegal trucking takes many forms, some being openly performed while others are the result of various subterfuges. The record sets forth illustrations of the different types, which need not be detailed here. But the sum of these practices hits hard in the competitive rail and motor common carrier fields. Such competition is not only illegal but also manifestly unfair since these common carriers are required by law to provide transportation to the general public under rules and regulations, enforced by Federal and State agencies, that are designed to assure reasonable and nondiscriminatory rates and services.

Much is being done in the way of enforcement, but more needs to be done, and more needs to be done in providing better tools for enforcement if enforcement is to be improved.

Many States are already working diligently to stop unlawful carriage. A 1963 survey shows that 29 States reported prosecution of 18,231 cases involving motor carriers operating without proper authority, with fines, generally levied against the driver, averaging $68. Some of the States require some form of registration with them by Interstate Commerce Commission authorized motor carriers, but there is no uniformity of registration nor of standards required, nor do State officers presently have access to Commission information for use in court.

The Interstate Commerce Commission in 1963 completed 432 court cases against illegal for-hire carriers, of which 379 were for operating without authority. The courts levied fines averaging some $1,277 for the 383 fines given. These cases show that the violations were not just "gypsy" truck operators, since they included 109 shippers, 352 unregulated carriers, 67 regulated carriers, and 50 individuals.

Economic violations of the act by these improperly operating truckers now must be handled in the courts as criminal cases. There are no civil forfeiture procedures applicable to them. Presently also they must be handled by the Commission, and that, too, frequently under difficulties of joining all parties in the action as it is evident that the trucker cannot operate illegally without the cooperation of a shipper, and the latter well may be located in a different territory. There is now no provision where the person suffering damage from this illegal operation may himself bring the violator into court.

For years persons who shipped by rail or water carrier have had a procedure for securing damages arising from violations of the Interstate Commerce Act either by way of complaint filed against the carrier with the Commission or in the courts, while those shipping by motor carrier or freight forwarder had assumed they had a similar, though more limited, remedy by proceeding against the carrier in the courts. In a 1959 Supreme Court decision this latter procedure was taken away, the Court holding that neither the courts nor the Commission had authority in this area.

The various Presidential messages of 1962, 1963, and 1964, as well as numerous bills before the committees of both Houses of the Congress, since have urged that the Congress take action to fill this gap in the protection afforded the shipper from unreasonable or discriminatory rates. Some proposals have looked toward making the procedures identical in the case of all modes of transportation. Other proposals suggest return simply to the pre-1959 modified reparations for motor carriers and freight forwarders in view of the potentially large number of claims to which they might be subject owing to the predominant carriage of small shipments. In 1962, 97 percent, or 230 million, of the total shipments handled by general property motor carriers were for less than truckload; while in 1962 the freight forwarders, dealing almost exclusively in LCL and ITL shipments, handled 22 million at an average of 400 pounds each.

Vast sums have been and continue to be expended for the development of a comprehensive system of waterways. Water transportation plays, and appropriately should play, an important role in our total national transportation network.

At present, 268 water carrier certificates and permits issued by the Commission are still in effect. Of this number, 84, or 31 percent, are not being used, 10 of which have been dormant since World War II, 20 years ago. The Commission testified that it "feels that the public interest is not served by allowing water carrier rights to remain in effect indefinitely. The mere existence of dormant rights under which operations can be lawfully reactivated at any time acts as a deterrent to the institution of new operations by other carriers and in some instances is a threat to the economic well-being of the transportation industry."

Clearly it is the intent of the Congress, in the improvement of waterways for transportation use, that they be used. Those located on such waterways have a right so to expect. Those located off such waterways who are, in part, paying for their improvement, also have the same right.

Hearings

As indicated above, the legislative proposals contained in the bill here reported were the subject of extensive hearings and consideration in the past two Congresses.

In this Congress, hearings were conducted by the committee, starting March 23 on H.R. 5401 and 15 other surface transportation measures which had been recommended by the Interstate Commerce Commission in its last annual report to the Congress on legislation that should be enacted. The bill here reported, H.R. 5401, covers the subjects treated in H.R. 5401 and 4 of the other 15 bills; namely, H.R. 5250, H.R. 5396, H.R. 5398, and H.R. 5869. (Others of these 15 bills will be the subject of later committee consideration.)

Numerous witnesses testified during the hearings and additional statements were filed for the record.

The Interstate Commerce Commission testified in general support of H.R. 5401, although indicating a preference for the treatment of certain subjects as contained in its own proposed bills. The Department of Commerce, Transportation Association of America, American Trucking Associations, and Chamber of Commerce supported H.R. 5401. The National Association of Motor Bus Operators, Private Carrier Conference, Private Truck Council, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, National Council of Farmer Cooperatives, and Freight Forwarders Institute supported H.R. 5401, with certain suggested amendments. The National Association of Railroad and Utilities Commissioners and the

National Industrial Traffic League supported sections 1 and 2 of H.R. 5401.

The Association of American Railroads, the American Short Line Railroad Association, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers indicated preference for H.R. 5396 to the comparable provisions of H.R. 5401. The two railroad associations and the National Industrial Conference League indicated preference for H.R. 5869 to the comparable provisions of H.R. 5401.

Sea-Land Service, Inc., testified in opposition to H.R. 5250, and the Middle Atlantic Conference filed a statement opposing H.R. 5401 and H.R. 5869.

Committee Amendment

The committee adopted H.R. 5401 as the vehicle for improving our transportation system for the purposes above set forth; namely, relief to our common carriers from illegal and unfair competition through State-Federal cooperation and other aids to enforcement of present law, and greater protection and service to the shipping public through providing remedies for violations by motor carriers and freight forwarders and through encouraging the development of water transportation.

To accomplish these purposes, the committee made several amendments to H.R. 5401 as introduced, as follows:

1. The addition of an amendment to section 2 to take care of situations where motor carriers may be self-insurers;
2. The striking of a proviso in sections 3 and 5 relating to the so-called primary business test (not contained in H.R. 5396) to which the private motor carriers objected without a further amendment and to which the Commission objected as introduced, and strongly opposed as proposed to be amended; and
3. The addition in section 5 of the same type of procedure by individuals injured by persons operating as freight forwarders as was provided in the case of motor carriers.

The committee further resolved the suggestions as to reparations by adopting sections 6 and 7 of H.R. 5401 rather than the provisions of H.R. 5869.

In addition, the committee incorporated H.R. 5250 as section 8 of the bill here reported, with a further amendment pertaining to the right of "free entry" into transportation upon waterways where no certificate is in effect.

Description of the Committee Amendment by Sections

STATE-FEDERAL COOPERATION

(Sec. 1, amending sec. 205 of the Interstate Commerce Act)

Under section 205(f) of the Interstate Commerce Act, the Commission, among other things, is authorized to avail itself of the cooperation, services, records, and facilities of State authorities in the enforcement or administration of the provisions of part II. This section of the committee substitute would amend section 205(f) of the act so as to specifically authorize the Commission to reciprocate by entering into cooperative agreements with the States to enforce State and Federal economic and safety laws and regulations concerning highway transportation.

In its docket No. 33440, *Prevention of Rail-Highway Grade Crossing Accidents Involving Railway Trains and Motor Vehicles*, decided January 22, 1964, the Interstate Commerce Commission, as a result of an extensive investigation, found an immediate need to intensify cooperative action with State authorities to enforce all laws and regulations in effect at rail-highway grade crossings. This need for intensified cooperative efforts is, however, not limited to the rail-highway grade crossing problem.

Your committee feels that enactment of this section (together with the amendments made by secs. 2, 3, 4, and 5) may be of substantial assistance in curbing unlawful operations by persons operating motor vehicles for hire without required certificates or permits.

It is the intention of the committee that under section 205(f) of the Interstate Commerce Act (as amended by this legislation) the Interstate Commerce Commission be empowered to enter into agreements with the States under which information concerning violations of State laws and regulations which has come to the attention of the Commission during the course of official examinations or inspections can be communicated to the States, notwithstanding the provisions of section 222(d).

STATE REGISTRATION OF ICC CERTIFICATES

(Sec. 2, amending sec. 202 of the Interstate Commerce Act)

Section 2 would amend section 202(b) of the Interstate Commerce Act to provide for the establishment of standards for the registration within the several States of certificates and permits issued to motor carriers by the Interstate Commerce Commission. Specifically, these standards would prescribe the forms and procedures required to evidence the lawfulness of interstate operations of a carrier within a State by (*a*) filing and maintaining current records of the certificates and permits issued by the Commission; (*b*) registering and identifying vehicles as operating under such certificates and permits; (*c*) filing and maintaining evidence of currently effective insurance or (under an amendment adopted by the committee) qualifications as a self-insurer under rules and regulations of the Commission; and (*d*) filing designations of local agents for service of process. To the extent warranted by differences in their operations, different standards for each of the classes of carriers would be authorized. Five years following their promulgation, the standards would go into effect and thereafter, State requirements in excess of those promulgated would constitute an undue burden on interstate commerce.

The National Association of Railroad and Utilities Commissioners (NARUC) would have the primary and exclusive right to determine the standards. The Interstate Commerce Commission's function would be a ministerial one—to "promulgate forthwith" standards determined by NARUC. Precedent for this approach is found in section 5 of the Safety Appliance Act (45 U.S.C. 5) as interpreted by the Supreme Court in *St. Louis & Iron Mt. Ry.* v. *Taylor* (210 U.S. 281 (1907)).

This section also provides that in the event NARUC fails to determine and certify to the Commission such standards within 18 months, or should it withdraw in their entirety standards previously

determined, the Commission then would be required to prescribe standards. This section specifically provides that nothing contained in it shall be construed (1) to deprive the Commission of its jurisdiction with respect to reasonable questions arising in the interpretation or construction of certificates of public convenience or necessity, permits, or rules and regulations issued by the Commission, nor (2) to authorize promulgation of standards in conflict with any rule or regulation of the Commission.

At present, registration requirements differ widely among the States; and this circumstance alone may impose undue burdens on carriers. Therefore, enactment of this legislation is necessary in order that relief from this multiplicity of different State registration requirements be achieved.

INCREASE IN CIVIL PENALTIES

(Sec. 3, amending sec. 222(h) of the Interstate Commerce Act)

Section 3 would amend section 222(h) of the Interstate Commerce Act so as to extend the civil forfeiture provisions therein to unlawful operations (not involving safety) by motor carriers.

In addition, the amount of forfeiture for any offense covered by the section would be increased from $100 to $500, and, in the case of a continuing violation, the maximum forfeiture which could be imposed for each additional day in which the offense continued would be increased from $50 to $250. However, under existing law, the forfeiture imposed for any offense must be $100, whereas, under the committee amendment, the forfeiture imposed for any offense could be any amount up to $500, thus allowing the court to relate the amount of the forfeiture to the gravity of the offense.

Under existing law, procedures for dealing with certain motor carrier violations are often slow and cumbersome, and frequently ineffective. Criminal prosecutions, for example, must be brought in the district in which the violations occur. Thus, in the case of multiple violations by a carrier with extensive territorial operations it may be necessary to institute separate actions in several district courts if all of the violations are to be covered. Civil forfeiture proceedings, on the other hand, may be instituted in the district in which the carrier maintains its principal office, where it is authorized to operate, or where it can be found. Moreover, less time is needed for investigating violations because of the difference in quantum of proof required in such proceedings.

Under the proposed amendment a civil forfeiture action could be brought against a for-hire motor carrier for transporting property without a required certificate or permit. Such action would be available whether or not the carrier had taken steps to give the operation an appearance of legality, but the principal enforcement advantage that would accrue would be when the operator, by means of an alleged vehicle lease or an alleged purchase of the commodity hauled is attempting to give the operation an appearance of private carriage. There are a number of vehicle arrangements in which the facts demonstrating their illegality are readily ascertainable. This is also true of unlawful operations under the guise of legitimate private carriage such as so-called buy and sell operations.

Since the quantum of proof required in a civil forfeiture proceeding is not as great as that required in a criminal action, a substantial amount of the time that must now be spent in preparing for criminal prosecutions in such cases could be devoted to handling a larger number of cases under the recommended forfeiture procedure.

ENFORCEMENT PROCEEDINGS BY THE COMMISSION

(Sec. 4, amending sec. 222(b) of the Interstate Commerce Act)

Section 4 would amend section 222(b) of the Interstate Commerce Act, which authorizes the Commission to seek injunctive relief in U.S. district courts against unlawful motor carrier or broker operations. In amending section 222(b), this section would broaden the provisions thereof so as to enable the Interstate Commerce Commission to obtain service of process upon motor carriers or brokers and to join other necessary parties without regard to where the carrier or other party may be served. At present, rule 4(f) of the Federal Rules of Civil Procedure limits the service of process in such proceedings to the territorial limits of the State in which the court sits.

In many instances the carriers against whom it is necessary to seek injunctions do not hold operating authority from the Commission and they, of course, have not designated an agent for the service of process as provided in section 221(c) of the Interstate Commerce Act. In other instances the Commission has been unable to obtain service of process upon both the carriers and the shipper because they were not located within the territorial limits of the same State.

The decision of the court in *Interstate Commerce Commission* v. *Blue Diamond Products Company* (192 F. 2d 43), precludes the Commission from proceeding against a shipper without proceeding against the carrier. The amendments made by this section would permit the Commission to institute a civil action against the carrier in any State in which it operates and to join in such action any shipper, or any other persons participating in the violation, without regard to where the carrier or shipper or such other person may be served.

ENFORCEMENT PROCEEDINGS BY INJURED PERSONS

(Sec. 5, amending secs. 222(b) and 417(b) of the Interstate Commerce Act)

This section adds new paragraphs to sections 222(b) and 417(b) of the act. The purposes that would be accomplished by these new paragraphs are the same. They would provide that any person injured by another as a result of operations in clear and patent violation of certain operating authority requirements of the act (or rules, regulations, requirements, or orders thereunder) could apply for injunctive relief directly to the district court of the United States for the district in which the violation occurs. At present, only the Commission may seek injunctive relief for violation of these requirements. (In the case of the amendment to sec. 222(b) of the act (relating to motor carriers) the operating authority requirements involved are in secs. 203(c), 206, 209, and 211; the operating authority requirements involved in the amendment to sec. 417 of the act (relating to freight forwarders) are in sec. 410.)

Under the proposed procedure the Commission would be served with notice of any action for relief and could appear therein as a matter of right. In addition, the party that prevailed could, in the discretion of the court, recover reasonable attorney's fees together with costs allowable under the Federal Rules of Civil Procedure. The party instituting the action would be required to post bond to protect the interests of the party or parties against whom the injunctive relief was sought.

These new provisions are intended to afford injured parties a measure of self-protection against operations which are openly and obviously unlawful. In each new paragraph the words "clear and patent" are used and are intended as a standard of jurisdiction rather than as a measure of the required burden of proof. As was stated in the Senate report on S. 2560, 87th Congress (S. Rept. 1588, 87th Cong., dated June 13, 1962), in explanation of an amendment to section 222(b) of the act which is identical to that proposed in this legislation:

> No district court is to entertain any action except where the act complained of is openly and obviously for-hire motor carriage without authority under the sections enumerated above * * *. The language of the section is designed to make it clear that the courts would entertain only those suits which involve obvious attempts to circumvent operating regulation.

Each of these new paragraphs also provides that nothing contained in them shall be construed to deprive the Interstate Commerce Commission of its jurisdiction to interpret or construe permits or rules and regulations issued by the Commission.

REPARATIONS

(Secs. 6 and 7, amending secs. 204a and 406a of the Interstate Commerce Act)

These sections would amend parts II and IV of the Interstate Commerce Act, applicable to motor carriers and freight forwarders, respectively, so as to permit shippers to recover reparations up to 2 years after the cause of action therefor arises. Reparations (as defined for purposes of this legislation) are charges made for transportation in accordance with filed tariffs to the extent that the Interstate Commerce Commission subsequently finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial.

In effect, these sections would permit a court of competent jurisdiction to award reparations to persons injured through violations of the Interstate Commerce Act by motor carriers and freight forwarders subject thereto. This would be accomplished in accordance with established judicial reference procedures under which the Commission would be called upon to aid the court by making necessary administrative determinations relating to the amount of reparations. This would restore a procedure formerly available to shippers which was set aside by the Supreme Court in 1959 by its decision in the *T.I.M.E.* case (359 U.S. 464) and would not affect in any way the right of shippers to recover damages for misrouting under the *Hewitt-Robins* doctrine. (See *Hewitt-Robins Incorporated* v. *Eastern Freight-Ways, Inc.*, 371 U.S. 84 (1962).)

Somewhat similar reparations provisions are now in effect in part I of the act (relating to railroads) and part III of the act (relating to water carriers).

REVOCATION OF CERTIFICATES AND PERMITS; FREE ENTRY

(Sec. 8, amending sec. 309 and adding a new sec. 312(a) to the Interstate Commerce Act)

This section would add a new section 312a to part III of the Interstate Commerce Act and a new subsection (h) to section 309 thereof.

The proposed new section 312a would permit the Interstate Commerce Commission (1) upon application of the holder thereof, to amend or revoke any certificate or permit in whole or in part, or (2) upon complaint or on its own initiative, to suspend, change, or revoke any certificate or permit in whole or in part, after reasonable notice and opportunity for a hearing, for willful failure to engage in or to continue to engage in the operation authorized by such certificate or permit. In addition, the Interstate Commerce Commission would be required to revoke that portion of a certificate authorizing any operation in which there has been a willful failure to engage for 3 or more years, but only after reasonable notice and opportunity for a hearing.

Subsection (h), which would be added to section 309 of the act by subsection (b) of this section, would permit free entry, i.e., without the necessity of obtaining a certificate of public convenience and necessity under section 309(a), into transportation by water subject to part III of the act over any route or routes or between ports for which no certificate is in effect and prohibits the granting of such certificates after the effective date of this legislation for transportation over any route or routes or between any ports with respect to which no such certificate is in effect.

The right of "free entry," without need to obtain a certificate, would obviously be meaningless if the Commission or others were able to thwart this right through a long-drawn-out rate proceeding. The committee therefore provides in this legislation that the Commission may not suspend any initial schedule filed by a common carrier performing transportation under this proposed subsection (h) for which the carrier never has had rates on file with the Commission. Subsequently, of course, the Commission has the authority, as it has in all instances, upon complaint or upon its own initiative, to open up a proceeding for the determination of the reasonableness or nondiscriminatory character of the rates. It cannot, however, prevent a carrier from entering into the business through suspension of one carrier's initial rates.

Taken together, this new section and subsection would permit domestic water carriers to give common carrier service on those waterways where no such service is now provided for by certification by permitting water carriers to give such service without being required to go to the trouble of obtaining a certificate of public convenience and necessity. Where there is such certification but the common carrier willfully fails to provide the contemplated service, his certificate could be revoked. And where such willful failure continues for 3 or more years, this section would require the Commission to revoke the certificate involved. It is the intention of the committee

that the holder of a certificate should "use it or lose it." That is, he should provide the transportation or lose the right to do so.

The committee is aware, however, that once the carrier loses his certificate because of nonuse, the carrier may experience difficulty in having it restored. The record of the Commission in granting certificates is such that the committee is not optimistic about the Commission seeing to it that the waterways are fully utilized. Thus, on new or newly developed waterways or on other waterways where there is no certificate holder, the bill makes it possible for anyone to provide transportation service by water without the necessity of obtaining a certificate, although he would be subject to rate regulation.

SECTION 9. EFFECTIVE DATE

This legislation would take effect on the 90th day after its enactment.

AGENCY REPORTS

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 29, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR CHAIRMAN HARRIS: In response to your request for additional comments on the bill, H.R. 5396, introduced by you, which would give effect to legislative recommendation No. 22, in the Commission's 78th Annual Report, I enclose a statement of justification for this bill.

Sincerely yours,

CHARLES A. WEBB, *Chairman.*

JUSTIFICATION

The purpose of H.R. 5396 is to provide the Interstate Commerce Commission with a more effective means of coping with the spread of illegal and so-called gray area motor carrier operations which are undermining the strength of the Nation's regulated common carrier system. It is also designed to buttress the Commission's intensified motor carrier safety enforcement program.

Under existing law, procedures for dealing with certain motor carrier violations are often slow and cumbersome, and frequently ineffective. Criminal prosecutions, for example, must be brought in the district in which the violations occurred. Thus, in the case of multiple violations by a carrier with extensive territorial operations it may be necessary to institute separate actions in several district courts if all of the violations are to be covered. Civil forfeiture proceedings, on the other hand, may be instituted in the district in which the carrier maintains its principal office, where it is authorized to operate, or where it can be found. Moreover, less time is needed for investigating violations because of the difference in quantum of proof required in such proceedings.

Under the proposed amendment a civil forfeiture action could be brought against a for-hire motor carrier for transporting property without a required certificate or permit. Such action would be available whether or not the carrier had taken steps to give the

operation an appearance of legality, but the principal enforcement advantage that would accrue would be when the operator, by means of an alleged vehicle lease or an alleged purchase of the commodity hauled, has attempted to give the operation an appearance of private carriage. More specifically, an owner of a vehicle may enter into a vehicle lease arrangement with a manufacturer under which the manufacturer allegedly uses the vehicle in private carrier operations. Such arrangments range all the way from a bona fide lease of a vehicle, at one extreme, to an obvious sham at the other. No enforcement action is, of course, involved in the case of a bona fide lease. The obvious shams, however, are the subject of criminal prosecution.

While there are a number of vehicle arrangements which the Commission believes to be illegal for-hire carriage by the vehicle owner, it is doubtful that a criminal conviction could be secured because of the necessity of showing knowledge and willfulness and proving guilt beyond a reasonable doubt. In addition, in a criminal proceeding there can be no appeal from an acquittal. Such cases are now handled in the civil courts, but an injunction against such operations in the future is all that can be secured. The possibility of a civil injunction action, where there is no pecuniary penalty or criminal stigma involved, has very little effect as a deterrent to would-be violators. A civil forfeiture action, such as that proposed, carrying with it substantial monetary penalties should, on the other hand, have a strong deterrent effect against questionable leasing arrangements.

Operations sometimes referred to as "buy and sell" operations are very similar in effect. By allegedly purchasing merchandise the transporter represents the operation to be private carriage. As in the case of leasing arrangements these operations have many variations, some of which present close questions as to whether the operation constitutes for-hire carriage. Some are obviously illegal for-hire operations and are handled as criminal cases. Others, however, are not so clearly unlawful as to warrant criminal action for the reasons stated above in connection with questionable leasing arrangements, but which, in the Commission's views, are nevertheless unlawful. Such operations may be continued for substantial periods during the pendency of a civil injunction proceeding and before a cease and desist order is issued by the court. If the proposed amendment were enacted a number of these cases could be made the subject of a civil forfeiture action in which, if successful, the operator would suffer a money judgment or forfeiture.

Enactment of H.R. 5396 would also greatly facilitate the Commission's enforcement activities in the important area of motor carrier safety. Although a very high percentage of cases involving violations of the Commission's safety regulations are disposed by of pleas of guilty or nolo contendere, investigations looking toward such prosecutions are nevertheless extremely time consuming because of the necessity of proving to the court every element of the alleged criminal offense. Since the quantum of proof required in a civil forfeiture proceeding is not as great as that required in a criminal action, a substantial amount of the time that must now be spent in preparing for criminal prosecutions in such cases could be devoted to handling a larger number of civil forfeiture proceedings.

The Commission's efforts at more effective and expeditious enforcement would also be greatly enhanced if it were authorized to institute

forfeiture proceedings directly in the courts instead of proceeding through the Department of Justice as it is now required to do. Delays would be avoided not only by eliminating the mechanics involved in taking the extra step, but also by the elimination of such delays as may be caused by the time consumed in convincing the U.S. attorney that an action should be filed.

These proposed amendments, coupled with a substantial increase in the amount of the forfeitures prescribed, would strengthen the Commission's hand considerably in dealing with some of the principal factors contributing to the decline of regulated common carriers.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 29, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: In response to your request for additional comments on the bill, H.R. 5398, introduced by you, which would give effect to legislative recommendation No. 21, in the Commission's 78th Annual Report, I enclose a statement of justification for this bill.

Sincerely yours,

CHARLES A. WEBB, *Chairman.*

JUSTIFICATION

H.R. 5398 would provide the Interstate Commerce Commission with a more effective means of enforcing the motor carrier provisions of the Interstate Commerce Act.

Under section 222(b) of the act the Commission is authorized to institute proceedings to enjoin unlawful motor carrier or broker operations or practices in the U.S. district court of any district in which the carrier or broker operates. Rule 4(f) of the Federal Rules of Civil Procedure, however, limits the service of process in such proceedings to the territorial limits of the State in which the court sits.

In many instances the carriers against whom it is necessary to seek injunctions do not hold operating authority from the Commission and they have not, of course, designated an agent for the service of process as provided in section 221(c) of the act. The operations of such carriers are frequently widespread and it is often desirable to institute the court action in the State where most of their services are performed. This is usually the most convenient place for the majority of persons involved, including necessary witnesses. The illegal operator, himself, however, may avoid service of process by remaining outside of the State and by not stationing within its borders anyone qualified to receive service on his behalf.

Coping with the problem of unlawful operations is further complicated when a large shipper is involved. An injunction against one or several relatively small carriers without the shipper being named permits the shipper to continue his unlawful activities by using individual truckers or small carriers against whom no previous action has been taken. It is therefore frequently desirable and often critically important, that such shipper, as well as the carriers, be enjoined from

participating in further violation of the law or the Commission's rules and regulations thereunder. In some instances, however, the Commission has been unable to obtain service of process upon both the carriers and the shipper because they were not located within the territorial limits of the same State.

The decision of the court in *Interstate Commerce Commission* v. *Blue Diamond Products Company,* 192 F. 2d 43, precludes the Commission from proceeding against a shipper without proceeding against the carrier. The Commission does not disagree with the principle of that case. However, it is of the view, and H.R. 5398 would so provide, that it should be able to institute a civil action against a carrier in any State in which the carrier operates and to join in such action any shipper, or any other person participating in the violation, without regard to where the carrier or the shipper or such other person may be served.

The problem presented has been particularly troublesome in the efforts of the Commission to control so-called pseudo private carriage, i.e., for-hire carriers claiming, without basis, to be engaged in private transportation for the purpose of evading the economic regulation to which common and contract carriers are subject. The seriousness of these unlawful operations was recognized by the Congress when, as a part of the Transportation Act of 1958, it amended section 203(c) of the Interstate Commerce Act so as to more clearly define what constitutes bona fide private carriage. However, because of the inability of the Commission, under present law, to get both the responsible shipper and the carrier before the court, its efforts at effective enforcement is, in many cases, thwarted.

The proposed amendment would make more effective the original intent of the Congress in enacting section 222(b) and would aid the Commission substantially in its efforts to administer and enforce the act.

In order to make the provisions of section 222(b) harmonize with changes recommended by the Commission in section 212(a) of the act (see legislative recommendation No. 25, 78th annual report), H.R. 5398 further provides that section 222(b) shall apply to any lawful rule, regulation, requirement, or order promulgated by the Commission. At present, the pertinent provision of section 222(b) refers only to rules, regulations, requirements, or orders promulgated under part II of the act.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 29, 1965.

B–120670.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: We refer to your letter of March 12, 1965, in which you ask for our comments on H.R. 5869.

This bill proposes to amend sections 204a and 406a of the Interstate Commerce Act, 49 U.C.S.A. 304a and 1006a, by subjecting common carriers by motor vehicle and freight forwarders to civil liability for violations of the act. It has been included in the legislative program of the Interstate Commerce Commission for some

years (see, for example, legislative recommendation No. 15, in its 78th annual report, p. 70), and similar proposals have been introduced in the 86th, 87th, and 88th Congresses, culminating with the provisions of sections 4 and 5 of H.R. 9903, 88th Congress, which was favorably reported by your committee. In our letter of March 29, 1963, B–120670, we commented on a similar bill, H.R. 2594, 88th Congress, and strongly recommended its favorable consideration by your committee. During June 1961, the Subcommittee on Transportation and Aeronautics of your committee held hearings on a similar legislative proposal in H.R. 5596, 87th Congress, at which a witness from our Office testified in support of the bill. We still believe that there is need for this type of legislation.

Motor common carriers and freight forwarders operating in interstate commerce, unlike common carriers by rail and water, from the inception of Federal regulation have been free from any statutory requirement to respond in damages to shippers suffering injury from violations of the Interstate Commerce Act. However, when the Interstate Commerce Commission commenced to function in the area of motor carrier regulation, it considered that a common law remedy for the exaction of unjust and unreasonable charges had survived the passage of the Motor Carrier Act of 1935 (pt. II of the Interstate Commerce Act), and that it was enforceable in any court of competent jurisdiction; the Commission held that its jurisdiction extended to the determination of the reasonableness of past motor carrier rates and charges ancillary to a court action to enforce the common law remedy. This doctrine, expounded in an early case, *Bell Potato Chip Co.* v. *Aberdeen Truck Line*, 43 M.C.C. 337 (1944), was followed by the Federal courts as well as the Commission until May 18, 1959, when the U.S. Supreme Court decided *T.I.M.E., Inc.* v. *United States*, 359 U.S. 464. In that case, the Court seemed to void the *Bell Potato Chip Co.* case doctrine by concluding that there was no common law remedy preserved by the Motor Carrier Act which would permit a shipper to challenge in postshipment litigation the reasonableness of the rates charged in accordance with a carrier's filed tariffs. As a result of the *T.I.M.E.* decision, the United States and other shippers via motor common carrier find themselves without any forum in which to seek and obtain damages flowing from a motor carrier's collection of unlawful charges as defined in the Interstate Commerce Act.

The United States, as the largest user of transportation services, purchases a considerable segment of its transportation requirements from motor common carriers. Payment for this transportation is made upon presentation of bills therefor in accordance with section 322 of the Transportation Act of 1940, as amended, 49 U.S.C.A. 66, without prior audit by the General Accounting Office as to the correctness of the charges. Upon postpayment audit in our Office, it is not uncommon to discover that the paid charges, even though they may have been based upon published and filed tariffs, were and are prima facie or conclusively unlawful in the light of standards established by the Interstate Commerce Commission and the courts when considering similar factual situations. Prior to the *T.I.M.E.* decision, under established rules of law, our auditors availed the Government of the Commission's prior findings of unreasonableness of motor carrier rates and practices. Because of the *T.I.M.E.* decision, this is no longer

obtains, and Government, as well as private, shippers have no way to recoup such unlawful excess payments to motor common carriers.

In an effort to help conserve appropriated funds, when in our audit we find instances of apparent unreasonable charges by motor common carriers, we have been notifying the interested department or agency of the facts involved and recommended that appropriate action be taken to protect the Government's interests, as by initiating proceedings in the Interstate Commerce Commission to obtain orders declaring certain rates or practices to be unreasonable for the future. It is part of our audit program to segregate certain cases as examples of particular possible unlawful motor carrier tariff situations and to suggest to the interested Government agency that action be taken with the object of saving the Government transportation costs in the future.

There are about five continuing major motor carrier tariff situations resulting in the assessment of legal (tariff) charges which we believe are unreasonable and therefore unlawful. They include tariffs naming high minimum charges for the transportation of less-truckload shipments of some types of explosives; tariffs naming charges for the exclusive use of a vehicle which apply despite the fact that the vehicle used is loaded to capacity (see *Campbell "66" Express Company, Inc.* v. *United States*, 302 F. 2d 27 (1962), and *Curtis Lighting Company, Inc.* v. *Mid-States Freight Lines, Inc.*, 303 I.C.C. 576 (1958)); tariffs containing capacity load minimum charge rules, held to be potentially discriminatory by the Interstate Commerce Commission in *Overflow and Minimum Charge Rule, Summit Fast Freight*, 61 M.C.C. 163 (1952); the absence in tariffs of an aggregate of intermediates rule—the situation described in the *T.I.M.E.* suit; and the maintenance in tariffs of exceptions ratings which are higher than classification ratings, a situation considered by the Interstate Commerce Commission to be anomalous and requiring special justification—see, for example, *Glass Exceptions Rating Between Middle Atlantic Points*, 314 I.C.C. 450 (1961).

The legally applicable charges allowable in the above-described types of cases produce the elements of unreasonable rate situations which, prior to the *T.I.M.E.* case, could have been made the subject of an action before the Interstate Commerce Commission for the determination of the reasonable charge basis as a predicate for judicial proceedings to obtain the reparations due the shipper. The *T.I.M.E.* case precludes action by the Government to obtain adjustment of such charges on past shipments to a reasonable basis. However, we have recently cooperated with the Department of Defense in complaint proceedings undertaken in the Interstate Commerce Commission seeking prospective adjustments in certain motor carrier tariff provisions alleged to be unlawful. And we have assisted the Department of Justice and the General Services Administration in successfully prosecuting several instances of unreasonable charges collected by the railroads under part I of the Interstate Commerce Act. Such cases have been developed in our Office in the course of our regular audit and, as we have indicated, since we are precluded by Public Law 85–762, effective August 26, 1958, 49 U.S.C.A. 66, from taking setoff action in the case of any (railroad or motor carrier) unlawful (unreasonable) charges, our Office refers carrier transactions, which might reflect the need for action to correct unlawful tariff situations, to the interested Government agency.

Since we had been applying the Commission's findings of unreasonableness in like situations in the audit of paid motor carrier charges, we were able, for some time after the Supreme Court decision, to state from our records a total outstanding amount of excess charges paid by the Government because of unjust and unreasonable rates. Between May 18, 1959 (the date of the *T.I.M.E.* decision), and February 4, 1961, we found such excess charges totaling $1,200,000. The average weekly rate of accumulation at the end of the reporting period was approximately $4,000. Because we lack legal means to recover such overpayments, because of the audit workload otherwise, and because we felt that a fairly constant rate of overpayments per week was being maintained, we discontinued recording overpayment statistics.

The situation produced by the *T.I.M.E.* decision continues to prevail and it has been complicated by another Supreme Court decision, *Hewitt-Robins, Inc.* v. *Eastern Freight-Ways, Inc.*, 371 U.S. 84, decided November 19, 1962. In that case a private shipper sued a motor carrier for damages caused by the unreasonable practice of misrouting. Instead of transporting the shipper's goods from Buffalo, N.Y., to New York City, over its low-rated intrastate route, the carrier transported them over its higher rated interstate route. The district court held the case in abeyance while the parties sought an Interstate Commerce Commission ruling on the reasonableness of the practice; the Commission held it to be unreasonable, but by the time the case was reached again in the district court, *T.I.M.E.* had been decided, and the district court dismissed the complaint. The court of appeals agreed, and the shipper took his case to the Supreme Court.

The Supreme Court concluded that *T.I.M.E.* did not control and reversed, thus in effect upholding an Interstate Commerce Commission determination of an unreasonable practice (carrier misrouting) resulting in damages recoverable by the shipper. The Court held that whether a common law remedy survived enactment of the Motor Carrier Act depends on the effect of the exercise of the remedy upon the statutory scheme of regulation; that even though the carrier misrouting resulted in the exaction of excess charges, it raised not a question rates, but one of routes; that a remedy for misrouting was not inconsistent with the statutory scheme of regulation and that such a remedy, therefore, survived the passage of the act. The Court "put no significance in whether one tags the claim as 'overcharges,' " or "whether it is a proceeding involving the 'reasonableness' of routing practices."

The *Hewitt-Robins* decision tends to introduce an element of confusion in considering the availability of a shipper's postshipment remedy for the recovery of damages under the Motor Carrier Act in that an unreasonable practice caused by a carrier's misrouting, as in *Hewitt-Robins*, is treated as being distinguishable from the unreasonable charge situation in *T.I.M.E.* Other distinguishable unlawful situations may exist and might be recognized and identified as furnishing grounds for the recovery of damages, but only after protracted and costly litigation.

Provisions for the recovery of unlawful charges have been in effect since 1906 (Hepburn Act) insofar as rail carriers are concerned, and it is difficult to rationalize the continued omission of similar provisions from the motor carrier and freight forwarder parts of the Interstate Commerce Act. According to the 78th Annual Report (p. 34) of the Interstate Commerce Commission the regulated railroad operating

revenues for the fiscal year ended June 30, 1963, were in excess of $10 billion, while those of the motor carriers of passengers and property were about $9,694 million. These figures suggest that the existing immunity of motor carriers from actions for the recovery of unlawful charges cannot be defended solely on financial or economic grounds. If such special treatment for motor carriers can be justified, question arises as to whether, for the purpose of uniformity in the applicability of statutory provisions controlling unlawful carrier rates and charges, rail carriers should not be relieved from an obligation to pay damages on past shipments in unlawful charge situations. We believe that the statutory remedies against railroads should be retained and that the discrimination against railroads in this respect (and the denial of an appropriate remedy to shippers) should be removed by equalizing the respective positions of the rail and motor carriers.

We have consistently recommended enactment of legislation to overcome the *T.I.M.E.* decision in order to promote uniformity of treatment of both carriers and shippers. We believe that the present state of the law, as a result of the *Hewitt-Robins* decision, makes enactment of such legislation even more desirable. We strongly urge that your committee give early and favorable consideration to H.R. 5869.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 29, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: In response to your request for additional comments on the bill, H.R. 5869, introduced by you, which would give effect to legislative recommendation No. 15, in the Commission's 78th Annual Report, I enclose a statement of justification for this bill.

Sincerely yours,

CHARLES. A. WEBB, *Chairman.*

JUSTIFICATION

H.R. 5869 would amend sections 204a and 406a of the Interstate Commerce Act, which relate to actions at law for the recovery of charges by or against common carriers by motor vehicle and freight forwarders, so as to make such carriers liable for the payment of damages to persons, including the United States as a shipper, injured by them as a result of unreasonable charges on past shipments. It would give to an injured party the choice of pursuing his remedy either before the Commission or in any court of competent jurisdiction. Appropriate periods of limitation are provided with respect to the commencement of such actions or proceedings.

At present, liability for an unreasonable rate exists, and a remedy is provided, only with respect to violations by railroads and other carriers subject to part I and by water carriers subject to part III of the act. Prior to the decision of the Supreme Court in *T.I.M.E. Inc.* v. *United*

States, 359 U.S. 464, May 18, 1959, the Commission, upon petition, made determinations of the reasonableness of past motor carrier rates on the assumption that the petitioner was entitled to maintain an action in court for reparations based upon the unreasonableness of such rates. However, in that case, the Court ruled that a shipper by a motor common carrier subject to part II cannot challenge in post-shipment litigation the reasonableness of the carrier's past charges made in accordance with applicable tariffs filed with the Commission. A shipper, therefore, is without remedy for injury arising from the application of an unreasonable rate. Since the pertinent provisions of part IV are similar to those under part II, a shipper by freight forwarder subject to part IV appears to be in the same plight.

The motor carrier industry has attained stature and stability as one of the chief agencies of public transportation, handling a substantial volume of the Nation's traffic. It seems appropriate, therefore, that shippers should have the same rights of recovery against motor carriers as they have against rail and water carriers for violations of the act.

The need for the relief proposed is evidenced by the number of proceedings instituted by shippers for redress against motor common carriers prior to the decision in the *T.I.M.E.* case. During the years ended June 30, 1958, and 1959, for example, 20 and 14 formal complaints or petitions, respectively, were filed to secure the Commission's determination of the reasonableness of established motor carrier rates ancillary to court actions for the recovery of reparations. During the calendar year 1958, a total of 101 informal complaints were filed against motor carriers claiming damages for unreasonable rates and practices. In 1950 only 10 such complaints were handled by the Commission, but by 1954 the number had risen to 110. Prior to the decision in the *T.I.M.E.* case, adjustments of such complaints were negotiated, in appropriate cases, by an informal and inexpensive procedure involving informal conferences and correspondence with the parties. Many informal complaints, however, were found not to be susceptible of adjustment by such means. If the Commission had then been vested with the requisite authority, the filing of formal complaints seeking awards of reparations probably would have followed, as is now the practice under parts I and III of the act. In this connection it should be noted that reparation procedures before the Commission are more simple and less expensive than actions in court to attain the same end. It may be anticipated, therefore, that although both the courts and the Commission would be authorized under the proposed amendments to award reparations, shippers would prefer resort to the Commission since the reasonableness of the rates involved would, under the provisions of the act, have to be determined by it upon referral of the question by the court.

Although the need for a provision authorizing awards of reparations against freight forwarders is not as pressing as in the case of motor carriers, it is equitable, logical, and desirable that all four parts of the act be uniform and that shippers by different modes be treated in similar fashion. Appropriate amendments to section 406a are therefore included in the draft bill.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 29, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: In response to your request for additional comments on the bill, H.R. 5250, introduced by you, which would give effect to legislative recommendation No. 4, in the Commission's 78th Annual Report, I enclose a statement of justification for this bill.

Sincerely yours,

CHARLES A. WEBB, *Chairman.*

JUSTIFICATION

The purpose of H.R. 5250 is to grant the Interstate Commerce Commission specific authority to revoke water carrier certificates and permits for nonuse. It would also specifically authorize the Commission, in its discretion, to amend or revoke, in whole or in part, a certificate or permit upon the application of the holder thereof.

At present 268 water carrier certificates and permits issued by the Commission remain in effect. Of this number, 84 or 31.2 percent are not being used, 10 of which have been dormant since World War II. Although the Commission may, upon proper application, grant identical operating authority to other carriers, the mere existence of these dormant certificates and permits under which operations can be lawfully reactivated at any time acts as a deterrent to the institution of new operations by other carriers and in some instances is a threat to the economic well-being of the transportation industry. While water carriers should have reasonable protection against loss of their operating rights where abnormal or special conditions have hindered resumption or continuance of operations, it is not in the public interest that unused operating authorities be allowed to remain in effect indefinitely.

Part III of the Interstate Commerce Act does not specifically provide revocation authority and procedure such as are found in parts II and IV thereof, which apply to motor carriers and freight forwarders, respectively. In this connection, the Supreme Court, in *United States* v. *Seatrain Lines, Inc.*, 329 U.S. 424, indicated that in the absence of express authority granted by Congress the Commission does not have the authority to revoke, in whole or in part, water carrier certificates or permits issued under part III of the act, once they have become effective and the time for requesting rehearing or reconsideration has expired.

Accordingly, H.R. 5250 would give the Commission specific authority to determine upon the facts in each case whether a certificate or permit should be revoked for nonuse. It would also confirm the Commission's power to revoke water carrier certificates and permits when tendered by the holder for cancellation.

The authority sought is limited to the revocation of certificates and permits only in those cases of willful failure to operate or when requested by the holder. It is not contemplated that operating authorities would be revoked for nonuse without allowing a reasonable period of time for resumption of service.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 19, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN; This is in reply to your request for the views of the Bureau of the Budget on H.R. 5205, a bill to amend part III of the Interstate Commerce Act to authorize the Interstate Commerce Commission to revoke, amend, or suspend water carrier certificates or permits under certain conditions.

This office would have no objection to the enactment of the proposed legislation.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERSTATE COMMERCE ACT

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PART II

SHORT TITLE

SEC. 201. This part may be cited as part II of the Interstate Commerce Act.

APPLICATION OF PROVISIONS

SEC. 202. (a) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(b)(*1*) Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

(*2*) *The requirement by a State that any motor carrier operating in interstate or foreign commerce within the borders of that State register its certificate of public convenience and necessity or permit issued by the Commission shall not constitute an undue burden on interstate commerce provided that such registration is accomplished in accordance with standards, or amendments thereto, determined and officially certified to the Commission by the national organization of the State commissions, as*

referred to in section 205(f) of this Act, and promulgated by the Commission. As so certified, such standards, or amendments thereto, shall be promulgated forthwith by the Commission and shall become effective five years from the date of such promulgation. As used in this paragraph, "standards or amendments thereto" shall mean specification of forms and procedures required to evidence the lawfulness of interstate operations of a carrier within a State by (a) filing and maintaining current records of the certificates and permits issued by the Commission, (b) registering and identifying vehicles as operating under such certificates and permits, (c) filing and maintaining evidence of currently effective insurance or qualifications as a self-insurer under rules and regulations of the Commission, and (d) filing designations of local agents for service of process. Different standards may be determined and promulgated for each of the classes of carriers as differences in their operations may warrant. In determining or amending such standards, the national organization of the State commissions shall consult with the Commission and with representatives of motor carriers subject to State registration requirements. To the extent that any State requirements for registration of motor carrier certificates or permits issued by the Commission impose obligations which are in excess of the standards or amendments thereto promulgated under this paragraph, such excessive requirements shall, on the effective date of such standards, constitute an undue burden on interstate commerce. If the national organization of the State commissions fails to determine and certify to the Commission such standards within eighteen months from the effective date of the paragraph, or if that organization at any time determines to withdraw in their entirety standards previously determined or promulgated, it shall be the duty of the Commission, within one year thereafter, to devise and promulgate such standards, and to review from time to time the standards so established and make such amendments thereto as it may deem necessary, in accordance with the foregoing requirements of this paragraph. Nothing in this paragraph shall be construed to deprive the Commission, when there is a reasonable question of interpretation or construction, of its jurisdiction to interpret or construe certificates of public convenience and necessity, or permits, or rules and regulations issued by the Commission, nor to authorize promulgation of standards in conflict with any rule or regulation of the Commission.

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ACTIONS FOR RECOVERY OF CHARGES; LIMITATION OF ACTIONS

SEC. 204a. (1) All actions at law by common carriers by motor vehicle subject to this part for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(2) For *recovery of reparations, action at law shall be begun against common carriers by motor vehicle subject to this part within two years from the time the cause of action accrues, and not after, and for* recovery of overcharges, action at law shall be begun against common carriers by motor vehicle subject to this part within three years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(3) If on or before expiration of the three-year period of limitation in paragraph (2) a common carrier by motor vehicle subject to this part begins action under paragraph (1) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(4) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(5) The term "reparations" as used in this section means damages resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 216(e) of this part, finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial.

[(5)] *(6)* The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

[(6)] *(7)* The provisions of this section shall apply only to cases in which the cause of action may accrue after the date of the enactment of this section.

[(7)] *(8)* The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court or by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U.S.C. 66), whichever is later.

ADMINISTRATION

SEC. 205. (a) * * *

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(f) The Commission is authorized to confer with or to hold joint hearings with any authorities of any State in connection with any matter arising in any proceedings under this part. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities as fully as may be practicable, in the enforcement or administration of any provision of this part. *In addition, the Commission is authorized to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation.* From any space in the Interstate Commerce Commission Building not required by the Commission, the Government authority controlling the allocation of space in public buildings shall assign for the use of the national organization of the State commissions and of their representatives suitable office space and facilities which shall be at all times available for the use of joint boards created under this part and for members and representatives of such boards cooperating with the Commission or with any other Federal commission or

department under this or any other Act; and if there be no such suitable space in the Interstate Commerce Commission Building, the same shall be assigned in some other building in convenient proximity thereto.

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UNLAWFUL OPERATION

SEC. 222. (a) * * *

[(b) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.]

(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any lawful rule, regulation, requirement, or order promulgated by the Commission, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply for the enforcement thereof to the district court of the United States for any district where such motor carrier or broker operates. In any proceeding instituted under the provisions of this subsection, any person, or persons, acting in concert or participating with such carrier or broker in the commission of such violation may, without regard to his or their residence, be included, in addition to the motor carrier or broker, as a party, or parties, to the proceeding. The court shall have jurisdiction to enforce obedience to any such provision of this part, or of such rule, regulation, requirement, order, term, or condition by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its offices, agents, employees, and representatives, and such other person, or persons, acting in concert or participating with such carrier or broker, from further violation of such provision of this part, or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto. Process in such proceedings may be served upon such motor carrier, or broker, or upon such person, or persons, acting in concert or participating therewith in the commission of such violation, without regard to the territorial limits of the district or of the State in which the proceeding is instituted.

(2) If any person operates in clear and patent violation of any provisions of section 203(c), 206, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have

jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as of right in any such action. The party who or which prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive, or other process is issued should it later be proven unwarranted by the facts and circumstances, Nothing in this paragraph shall be construed to deprive the Commission of its jurisdiction to interpret or construe certificates of public convenience and necessity or permits, or rules and regulations issued by the Commission.

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(h) Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirement of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, [shall forfeit to the United States the sum of $100 for each such offense, and, in case of a continuing violation, not to exceed $50] *or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1) shall forfeit to the United States not to exceed $500 for each such offense, and, in case of a continuing violation not to exceed $250* for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker; or in any district where such forfeiture may accrue; or in the district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found. It shall be the duty of the various district attorneys under the direction of the Attorney General of the United States to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

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PART III

SHORT TITLE

SEC. 301. This part, divided into sections according to the following table of contents, may be cited as part III of the Interstate Commerce Act:

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DEFINITIONS

SEC. 302. For the purposes of this part—

(a) The term "person" includes any individual, firm, copartnership, corporation, company, association, joint stock association, and any trustee, receiver, assignee, or personal representative thereof.

(b) The term "Commission" means the Interstate Commerce Commission.

(c) The term "water carrier" means a common carrier by water or a contract carrier by water.

(d) The term "common carrier by water" means any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, except transportation by water by an express company subject to part I in the conduct of its express business, which shall be considered to be and shall be regulated as transportation subject to part I.

(e) The term "contract carrier by water" means any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (d) and the exception therein) by water of passengers or property in interstate or foreign commerce for compensation.

The furnishing for compensation (under a charter, lease, or other agreement) of a vessel, to a person other than a carrier subject to this Act, to be used by the person to whom such vessel is furnished in the transportation of its own property, shall be considered to constitute as to the vessel so furnished, engaging in transportation for compensation by the person furnishing such vessel, within the meaning of the foregoing definition of "contract carrier by water". Whenever the Commission, upon its own motion or upon application of any interested party, determines that the application of the preceding sentence to any person or class of persons is not necessary in order to effectuate the national transportation policy declared in this Act, it shall by order exempt such person or class of persons from the provisions of this part for such period of time as may be specified in such order. The Commission may by order revoke any such exemption whenever it shall find that the application of such sentence to the exempted person or class of persons is necessary in order to effectuate such national transportation policy. No such exemption shall be denied or revoked except after reasonable opportunity for hearing.

(f) The term "vessel" means any watercraft or other artificial contrivance of whatever description which is used, or is capable of being, or is intended to be, used as a means of transportation by water.

(g) The term "transportation facility" includes any vessel, warehouse, wharf, pier, dock, yard, grounds, or any other instrumentality or equipment of any kind, used in or in connection with transportation by water subject to this part.

(h) The term "transportation" includes the use of any transportation facility (irrespective of ownership or of any contract, express or implied, for such use), and includes any and all services in or in connection with transportation, including the receipt, delivery, elevation, transfer in transit, refrigeration or icing, ventilation, storage, and handling of property transported or the interchange thereof with any other agency of transportation.

(i) The term "interstate or foreign transportation" or "transportation in interstate or foreign commerce", as used in this part, means transportation of persons or property—

(1) wholly by water from a place in a State to a place in any other State, whether or not such transportation takes place wholly in the United States;

(2) partly by water and partly by railroad or motor vehicle, from a place in a State to a place in any other State; except that with respect to such transportation taking place partly in the United States and partly outside thereof, such terms shall include transportation by railroad or motor vehicle only insofar as it takes place within the United States, and shall include transportation by water only insofar as it takes place from a place in the United States to another place in the United States;

(3) wholly by water, or partly by water and partly by railroad or motor vehicle, from or to a place in the United States to or from a place outside the United States, but only (A) insofar as such transportation by rail or by motor vehicle takes place within the United States, and (B) in the case of a movement to a place outside the United States, only insofar as such transportation by water takes place from any place in the United States to any other place therein prior to transshipment at a place within the United States for movement to a place outside thereof, and, in the case of a movement from a place outside the United States, only insofar as such transportation by water takes place from any place in the United States to any other place therein after transshipment at a place within the United States in a movement from a place outside thereof.

(j) The term "United States" means the States of the United States and the District of Columbia.

(k) The term "State" means a State of the United States or the District of Columbia.

(l) The term "common carrier by railroad" means a common carrier by railroad subject to the provisions of part I.

(m) The term "common carrier by motor vehicle" means a common carrier by motor vehicle subject to the provisions of part II.

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CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITS

SEC. 309. (a) Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however*, That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending the determination of any such application, the continuance of such operation shall be lawful. If the application for such certificate is not made within one hundred and twenty days after this section takes effect, it shall be decided in accordance with the standards and procedure provided for in subsection (c), and such certificate shall be issued or denied accordingly. Any person, not included within the provisions of the foregoing proviso, who is engaged in transportation as a common carrier by water when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate, and, if application for such certificate is made to the Commission within such period, the continuance of such operation shall be lawful pending determination of such application: *Provided further*, That, subject to the provisions of section 310, if any person (or his predecessor in interest) was in operation on August 26, 1958, over any inland waterway, other than the high seas, as a common carrier by water, in interstate or foreign commerce, between points in the Territory of Alaska, and has so operated in Alaska since that time (or if engaged in furnishing seasonal service only, was engaged in such

operations in the year 1958 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which such person or his predecessor in interest had no control, a certificate shall be issued authorizing such operations without requiring further proof that public convenience and necessity will be served thereby, and without further proceedings, if application for such certificate is made as provided herein on or before December 31, 1960. Pending the determination of any such application, the continuance of such operations without a certificate shall be lawful. Applications for certificates under this proviso shall be filed with the Commission in writing, and in such form, contain such information, and be accompanied by proof of service upon such interested parties as the Commission shall require.

(b) Application for a certificate shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulations, require.

(c) Subject to section 310, upon application as provided in this section the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if the Commission finds that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.

(d) Such certificate shall specify the route or routes over which, or the ports to and from which, such carrier is authorized to operate, and, at the time of issuance and from time to time thereafter, there shall be attached to the exercise of the privileges granted by such certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such other terms, and conditions, and limitations as are necessary to carry out, with respect to the operations of the carrier, the requirements of this part or those established by the Commission pursuant thereto: *Provided, however*, That no terms, conditions, or limitations shall restrict the right of the carrier to add to its equipment, facilities, or service within the scope of such certificate, as the development of the business and the demands of the public shall require, or the right of the carrier to extend its services over uncompleted portions of waterway projects now or hereafter authorized by Congress, over the completed portions of which it already operates, as soon as such uncompleted portions are open for navigation.

(e) No certificate issued under this part shall confer any proprietary or exclusive right or rights in the use of public waterways.

(f) Except as otherwise provided in this section and section 311, no person shall engage in the business of a contract carrier by water unless he or it holds an effective permit, issued by the Commission authorizing such operation: *Provided*, That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by water on January 1, 1940, over the route

or routes or between the ports with respect to which application is made, and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such permit, without further proceedings, if application for such permit is made to the Commission as provided in subsection (g) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending the determination of any such application, the continuance of such operation shall be lawful. If the application for such permit is not made within one hundred and twenty days after this section takes effect, it shall be decided in accordance with the standards and procedure provided for in subsection (g), and such permit shall be issued or denied accordingly. Any person, not included within the provision of the foregoing proviso, who is engaged in transportation as a contract carrier by water when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a permit, and, if application for such permit is made to the Commission within such period, the continuance of such operation shall be lawful pending the determination of such application: *Provided further*, That, subject to the provisions of section 310, if any person (or his predecessor in interest) was in operation on August 26, 1958, over any inland waterway, other than the high seas, as a contract carrier by water, in interstate or foreign commerce, between points in the Territory of Alaska, and has so operated in Alaska since that time (or if engaged in furnishing seasonal service only, was engaged in such operations in the year 1958 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which such person or his predecessor in interest had no control, a permit shall be issued authorizing such operations, without further proceedings, if application for such permit is made as provided herein before December 31, 1960. Pending the determination of such application, the continuance of such operations without a permit shall be lawful. Applications for permits under this proviso shall be filed with the Commission in writing, and in such form, contain such information, and be accompanied by proof of service upon such interested parties as the Commission shall require.

(g) Application for such permit shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulations, require. Subject to section 310, upon application the Commission shall issue such permit if it finds that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that such operation will be consistent with the public interest and the national transportation policy declared in this Act. The business of the carrier and the scope thereof shall be specified in such permit and there shall be attached thereto at time of issuance and from time to time thereafter such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier by water, as are necessary to carry

out the requirements of this part or those lawfully established by the Commission pursuant thereto: *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to substitute or add contracts within the scope of the permit, or to add to his equipment, facilities, or service, within the scope of the permit, as the development of the business and the demands of the carrier's patrons shall require.

(h) No person shall be required to obtain a certificate under subsection (a) in order to perform transportation subject to the provisions of this part over any route or routes or between any ports with respect to which no such certificate is in effect, and on and after the effective date of this subsection no such certificates shall be issued to perform such transportation over any route or routes or between any ports with respect to which no such certificate is then in effect. Any person performing such transportation under the provisions of this subsection shall be deemed to be a common carrier by water for the purposes of this part. The Commission may not suspend any initial schedule of rates filed by any person performing transportation under the provisions of this subsection for which such person has never had rates on file with the Commission.

DUAL OPERATIONS UNDER CERTIFICATES AND PERMITS

SEC. 310. Unless, for good cause shown, the Commission shall find, or shall have found, that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in this Act—

(1) no person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate as a common carrier by water if such person, or any such controlling person, controlled person, or person under common control, holds a permit as a contract carrier by water; and

(2) no person, or any person controlling, controlled by, or under common control with such person, shall hold a permit as a contract carrier by water if such person, or any such controlling person, controlled person, or person under common control, holds a certificate as a common carrier by water.

TEMPORARY OPERATIONS

SEC. 311. (a) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier by water or a contract carrier by water, as the case may be. Such temporary authority shall be valid for such time as the Commission shall specify but not for more than an aggregate of one hundred and eighty days, and shall create no presumption that corresponding permanent authority will be granted thereafter.

(b) Pending the determination of an application filed with the Commission under this Act for approval of a consolidation or merger of the properties of two or more water carriers, or of a purchase, lease, or contract to operate the properties of one or more water carriers, the Commission may, for good cause shown, and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred and eighty days, of operation of the properties of such carriers by water by the person proposing to acquire them, as aforesaid.

TRANSFER OF CERTIFICATES AND PERMITS

SEC. 312. Except as provided in this part, any such certificate or permit may be transferred in accordance with such regulations as the Commission shall prescribe for the protection of the public interest and to insure compliance with the provisions of this part.

REVOCATION OF CERTIFICATES AND PERMITS

SEC. 312a. (1) Certificates and permits shall be effective from the date specified therein, and shall remain in effect until suspended or revoked as provided in this section.

(2) Any certificate or permit issued under this part may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may, upon complaint, or on the Commission's own initiative, after reasonable notice and opportunity for hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to engage in, or to continue to engage in, the operation authorized by such certificate or permit.

(3) The Commission shall, upon complaint or on its own initiative, after reasonable notice and opportunity for hearing, in any case of willful failure to engage in any operation authorized by any such certificate for a period of three or more years (whether occurring before or after the date of enactment of this section), revoke the part of such certificate authorizing such operation.

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PART IV

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ACTIONS FOR RECOVERY OF CHARGES; LIMITATION OF ACTIONS

SEC. 406a. (1) All actions at law by freight forwarders subject to this part for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause for action accrues, and not after.

(2) For *recovery of reparations, action at law shall be begun against freight forwarders subject to this part within two years from the time the cause of action accrues, and not after, and for* recovery of overcharges, action at law shall be begun against freight forwarders subject so this part within three years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the freight forwarder within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the freight forwarder to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(3) If on or before expiration of the three-year period of limitation in paragraph (2) a freight forwarder subject to this part begins action under paragraph (1) for recovery of charges in respect of the same service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include

ninety days from the time such action is begun or such charges are collected by the freight forwarder.

(4) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the freight forwarder, and not after.

(5) The term "reparations" as used in this section means damages resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 406 of this part, finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial.

[(5)] *(6)* The term "overcharges" as used in this section shall be deemed to mean charges for service in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

[(6)] *(7)* The provisions of this section shall apply only to cases in which the cause of action may accrue after the date of the enactment of this section.

[(7)] *(8)* The provisions of this section 406a shall extend to and embrace all transportation of property for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U.S.C. 66), whichever is later.

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ENFORCEMENT AND PROCEDURE

SEC. 417. (a) * * *

(b)*(1)* If any freight forwarder fails to comply with or operates in violation of any provision of this part, or any rule, regulation, requirement, or order thereunder, or of any term or condition of any permit, the Commission or the Attorney General of the United States (or, in case of such an order, any party injured by the failure to comply therewith or by the violation thereof) may apply to any district court of the United States having jurisdiction of the parties for the enforcement of such provision of this part or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ or writs of injunction or other process, mandatory or otherwise, restraining such freight forwarder and any officer, agent, employee, or representative thereof from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition, and enjoining obedience thereto.

(2) If any person operates in clear and patent violation of section 410 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as of right in any such action. The party who or which prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive or other process is issued should it later be proven unwarranted by the facts and circumstances. Nothing in this paragraph shall be construed to deprive the Commission of its jurisdiction to interpret or construe permits, or rules and regulations issued by the Commission.

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89TH CONGRESS
1ST SESSION

H. R. 5401

approved by Committee April 15

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1965

Mr. HARRIS introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Interstate Commerce Act so as to strengthen and improve the national transportation system, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (f) of section 205 of the Interstate Commerce Act (49 U.S.C. 305 (f)) is amended by inserting after the second sentence thereof the following new sentence: "In addition, the Commission is authorized to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation."

SEC. 2. Subsection (b) of section 202 of the Interstate

Commerce Act (49 U.S.C. 302 (b)) is amended by inserting "(1)" immediately after "(b)" and by adding at the end thereof the following:

"(2) The requirement by a State that any motor carrier operating in interstate or foreign commerce within the borders of that State register its certificate of public convenience and necessity or permit issued by the Commission shall not constitute an undue burden on interstate commerce provided that such registration is accomplished in accordance with standards, or amendments thereto, determined and officially certified to the Commission by the national organization of the State commissions, as referred to in section 205 (f) of this Act, and promulgated by the Commission. As so certified, such standards, or amendments thereto, shall be promulgated forthwith by the Commission and shall become effective five years from the date of such promulgation. As used in this paragraph, 'standards or amendments thereto' shall mean specification of forms and procedures required to evidence the lawfulness of interstate operations of a carrier within a State by (a) filing and maintaining current records of the certificates and permits issued by the Commission, (b) registering and identifying vehicles as operating under such certificates and permits, (c) filing and maintaining evidence of currently effective insurance, and (d) filing designations of local agents for service of process. Different standards

may be determined and promulgated for each of the classes of carriers as differences in their operations may warrant. In determining or amending such standards, the national organization of the State commissions shall consult with the Commission and with representatives of motor carriers subject to State registration requirements. To the extent that any State requirements for registration of motor carrier certificates or permits issued by the Commission impose obligations which are in excess of the standards or amendments thereto promulgated under this paragraph, such excessive requirements shall, on the effective date of such standards, constitute an undue burden on interstate commerce. If the national organization of the State commissions fails to determine and certify to the Commission such standards within eighteen months from the effective date of the paragraph, or if that organization at any time determines to withdraw in their entirety standards previously determined or promulgated, it shall be the duty of the Commission, within one year thereafter, to devise and promulgate such standards, and to review from time to time the standards so established and make such amendments thereto as it may deem necessary, in accordance with the foregoing requirements of this paragraph. Nothing in this paragraph shall be construed to deprive the Commission, when there is a reasonable question of interpretation or construction, of its jurisdiction to interpret or construe cer-

tificates of public convenience and necessity, or permits, or rules and regulations issued by the Commission, nor to authorize promulgation of standards in conflict with any rule or regulation of the Commission."

SEC. 3. Subsection (h) of section 222 of the Interstate Commerce Act (49 U.S.C. 322 (h)) is amended by striking out the words "shall forfeit to the United States the sum of $100 for each such offense, and, in case of a continuing violation, not to exceed $50 for each additional day during which such failure or refusal shall continue" in the first sentence therein and by inserting in lieu thereof the following: "or who shall fail or refuse to comply with the provisions of section 203 (c) or section 206 (a) (1) or section 209 (a) (1) shall forfeit to the United States not to exceed $500 for each such offense, and, in case of a continuing violation not to exceed $250 for each additional day during which such failure or refusal shall continue: *Provided, however*, That nothing in this section shall deprive the Commission of its primary jurisdiction to determine the validity of an operation in dispute under the primary business test."

SEC. 4. Subsection (b) of section 222 of the Interstate Commerce Act (49 U.S.C. 322 (b)) is amended to read as follows:

"(b) (1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any lawful rule, regulation, requirement, or order promulgated by the Commission, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply for the enforcement thereof to the district court of the United States for any district where such motor carrier or broker operates. In any proceeding instituted under the provisions of this subsection, any person, or persons, acting in concert or participating with such carrier or broker in the commission of such violation may, without regard to his or their residence, be included, in addition to the motor carrier or broker, as a party, or parties, to the proceeding. The court shall have jurisdiction to enforce obedience to any such provision of this part, or of such rule, regulation, requirement, order, term, or condition by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives, and such other person, or persons, acting in concert or participating with such carrier or broker, from further violation of such provision of this part, or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto. Process in such proceedings may be served upon such motor carrier, or broker, or upon

such person, or persons, acting in concert or participating therewith in the commission of such violation, without regard to the territorial limits of the district or of the State in which the proceeding is instituted."

SEC. 5. Subsection (b) of section 222 of the Interstate Commerce Act (49 U.S.C. 322 (b)) (as amended by section 4 of this Act) is further amended by adding at the end thereof the following:

"(2) If any person operates in clear and patent violation of any provisions of section 203 (c), 206, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as of right in any such action. The party who or which

prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive, or other process is issued should it later be proven unwarranted by the facts and circumstances. Nothing in this paragraph shall be construed to deprive the Commission of its jurisdiction to interpret or construe certificates of public convenience and necessity or permits, or rules and regulations issued by the Commission, or deprive the Commission of its primary jurisdiction to determine the validity of an operation in dispute under the primary business test."

SEC. 6. (a) Paragraph (2) of section 204a of the Interstate Commerce Act (49 U.S.C. 304a) is amended to read as follows:

"(2) For recovery of reparations, action at law shall be begun against common carriers by motor vehicle subject to this part within two years from the time the cause of action accrues, and not after, and for recovery of overcharges, action at law shall be begun against common carriers by motor vehicle subject to this part within three years from the

time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice."

(b) Section 204a of the Interstate Commerce Act (49 U.S.C. 304a) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and by inserting immediately after paragraph (4) thereof the following:

"(5) The term 'reparations' as used in this section means damages resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 216(e) of this part, finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial."

SEC. 7. (a) Paragraph (2) of section 406a of the Interstate Commerce Act (49 U.S.C. 1006a) is amended to read as follows:

"(2) For recovery of reparations, action at law shall be begun against freight forwarders subject to this part within two years from the time the cause of action accrues, and not after, and for recovery of overcharges, action at law

shall be begun against freight forwarders subject to this part within three years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the freight forwarder within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the freight forwarder to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice."

(b) Section 406a of the Interstate Commerce Act (49 U.S.C. 1006a) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and by inserting immediately after paragraph (4) thereof the following:

"(5) The term 'reparations' as used in this section means damages resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 406 of this part, finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial."

SEC. 8. The amendments made by this Act shall take effect on the ninetieth day after the date of enactment of this Act.

89TH CONGRESS
1ST SESSION

H. R. 5401

A BILL

To amend the Interstate Commerce Act so as to strengthen and improve the national transportation system, and for other purposes.

By Mr. HARRIS

FEBRUARY 24, 1965
Referred to the Committee on Interstate and Foreign Commerce

89TH CONGRESS
1ST SESSION

H. R. 5868

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1965

Mr. HARRIS introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend section 22 of the Interstate Commerce Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 (1) of the Interstate Commerce Act is amended by striking out all down through "mileage, excursion, or commutation passenger tickets;" and by inserting in lieu thereof the following: "That nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments either during time of war or national emergency as declared by Congress or the President or when such property consists of (a) ordinary livestock,

fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof), as such property is defined in section 203 (b) (6) of part II, or (b) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count; nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates during time of war or national emergency as declared by Congress or the President, or the issuance of mileage, excursion, or commutation passenger tickets;".

89TH CONGRESS
1ST SESSION

H. R. 5868

A BILL

To amend section 22 of the Interstate Commerce Act.

By Mr. HARRIS

MARCH 5, 1965
Referred to the Committee on Interstate and Foreign Commerce

89TH CONGRESS
1ST SESSION

H. R. 6472

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1965

Mr. DULSKI introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To provide for the transportation of mail by motor vehicles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in arranging for the transportation of mail, the Postmaster General, consistent with the national transportation policy (49 U.S.C. 1), shall use the services and facilities of all regulated modes of transportation including those of regulated carriers of property by motor vehicle to the maximum extent they are available and adequately meet the needs of the postal service for safe, economical, efficient, and expeditious movement of mail.

SEC. 2. As used in this Act—

(a) "Commission" means the Interstate Commerce Commission of the United States.

(b) "Mail" or "mail matter" means United States mail of any class, and foreign mails in transit across the territory of the United States.

(c) "Mail transportation" includes services and the use of facilities in conjunction with the transportation of mail.

(d) For purposes of this Act, a "regulated carrier" is (a) any person who holds a certificate of public convenience and necessity or certificate registration from the Commission, or from a regulatory body of a State, territory, or possession of the United States, for the transportation of property by motor vehicles in intrastate, interstate, or foreign commerce for compensation (except an express company to the extent that it is subject to part I of the Interstate Commerce Act) as a common carrier or, (b) any person who holds a permit from the Commission or from a regulatory body of a State, territory, or possession for the transportation of property in intrastate, interstate, or foreign commerce for compensation as a contract carrier or, (c) any person which is exempt from certain regulation by section 203 (b) (8) of the Interstate Commerce Act or under the regulatory law of any State, territory, or possession of the United States.

SEC. 3. For purposes of this Act, mail transportation is

declared to be transportation of property in interstate commerce.

SEC. 4. Within ninety days after the effective date of this Act, the Postmaster General shall file with the Commission a statement or statements of services for the utilization of regulated carriers for mail transportation, and may thereafter file such additional statements of services as he may deem necessary or advisable. Each statement of service shall set forth the Postmaster General's requirements for mail transportation by regulated carriers, and the units of service upon which compensation shall be based, and such other information which may be pertinent and material to such mail transportation and the establishment of rates of compensation therefor.

SEC. 5. (a) The Commission shall promptly give notice to the public of the filing of statements of service, and under such procedures as the Commission shall specify the regulated carriers shall respond. The response of the regulated carriers shall, among other things, include their rates for mail transportation. The Postmaster General shall pay the regulated carriers at their initial rates until such time as other rates are established by the Commission pursuant to this section.

(b) The Commission shall promptly commence an in-

vestigation to determine and fix the fair and reasonable rates of compensation for mail transportation by regulated carriers; however, pending the establishment of rates by the Commission, the Commission shall not suspend any initial rates filed by regulated carriers applicable to mail transportation.

(c) In any proceeding under this Act, the Commission shall hold hearings to the same extent and with the same powers and authority as provided by law for other hearings between carriers and shippers.

SEC. 6. At any time after six months from the entry of an order stating the Commission's determination, the Postmaster General, or an interested regulated carrier, or group of such carriers, may apply for a reexamination of the terms of such order, and substantially similar proceedings as have theretofore been had shall be followed with respect to the rates of compensation and services covered by the application. At the conclusion of the hearing, the Commission shall enter an order stating its determination.

SEC. 7. The Postmaster General shall pay the regulated carriers the rates of compensation so determined and fixed at such times as named in the order.

SEC. 8. (a) When requested by the Postmaster General, every regulated carrier, except as provided by subsection (b) of this section, shall perform mail transportation in the

manner, under the conditions, and within the services prescribed in accordance with applicable statements of services as approved by the Commission over the route or routes or within the territory for which it has operating authority or if the carrier is exempt under section 203(b)(8) of the Interstate Commerce Act, in the area exempted.

(b) Any regulated carrier may apply to the Postmaster General for relief from the requirements of this section by reason of conditions which impose hardship upon it. The Postmaster General shall grant such application.

SEC. 9. It shall be unlawful for any regulated carrier to fail or refuse to perform the services set forth in the applicable statement of services unless such failure is caused by unavoidable accident, or other circumstances beyond the control of the carrier. For refusal to perform service, the Postmaster General may impose a penalty not in excess of three times the compensation applying to the transportation with respect to which the violation occurred. For all other violations, the Postmaster General may impose a penalty not in excess of the reasonable value of any mail matter lost, destroyed, or damaged. The Postmaster General may remit the whole or any part of any penalty. In case of disagreement with respect to the carrier's liability or amount of liability under this section, either party may file a petition with the Commission requesting it to hold a hearing and the

Commission shall issue an order determining the liability or amount of liability of the carrier.

SEC. 10. No specific authority to transport mail shall be required to be obtained by any regulated carrier from the Commission, or from a regulatory body of any State, territory or possession of the United States, and no rate of compensation for such transportation shall be subject to control by any such regulatory body except as herein provided.

SEC. 11. Nothing herein contained shall prevent the Postmaster General from entering into star-route contracts under existing provisions of law nor shall anything herein impair or suspend contracts for the transportation of mail by persons that are now in force and effect.

SEC. 12. Any provision of law inconsistent with the provisions of this Act is hereby repealed.

89TH CONGRESS
1ST SESSION

H. R. 6472

A BILL

To provide for the transportation of mail by motor vehicles.

By Mr. DULSKI

MARCH 18, 1965

Referred to the Committee on Post Office and Civil Service