Jan. 16, 1950, p. 436). The seven days that the motion must be on the calendar before it may be called up begins to run as of the day the motion is placed on the calendar (Dec. 14, 1937, p. 1517). A discharge petition in the 102d Congress received the requisite number of signatures on the same day it was filed (May 20, 1992, p. ——), and subsequently by unanimous consent the House dispensed with the motion to discharge and agreed to consider the object of the petition (a special order of business resolution) on a date certain under the same terms as if discharged by motion (June 4, 1992, p. ——). In the 103d Congress a discharge petition also received the requisite number of signatures on the same day it was filed (Feb. 24, 1994, p. ——).

The right to close twenty minute debate on a motion to discharge a Committee is reserved to the proponents of the motion (VII, 1010a); and the chairman of the committee being discharged, if opposed to the motion, has been recognized to control the ten minutes in opposition (Aug. 10, 1970, p. 27999).

Where a measure not requiring consideration in the Committee of the Whole House on the State of the Union is brought before the House by a successful motion to discharge, the Member moving its consideration is recognized in the House under the hour rule (Aug. 10, 1970, p. 28004).

The point of order provided in clause 5(a) of rule XXI does not apply to an appropriation in a bill taken away from a committee by the motion to discharge (VII, 1019a).

RULE XXVIII.

CONFERENCE REPORTS.

§909. High privilege of conference reports; and form of accompanying statement.

1. (a) The presentation of reports of committees of conference shall always be in order, except when the Journal is being read, while the roll is being called, or the House is dividing on any proposition.

The practice of giving conference reports privilege dates from 1850, having had its origin in a temporary rule. This practice was continued by rulings of the Chair until this rule was adopted in 1880 (V, 6443–6446, 6454).

Under the language of the rule a conference report may be presented while a Member is occupying the floor in debate (V, 6451; VIII 3294), while a bill is being read (V, 6448), after the yeas and nays have been ordered (V, 6457), after the previous question has been demanded or ordered (V, 6449, 6450); during a call of the House if a quorum be present (V, 6456) and on Calendar Wednesday (VII, 907), but consideration of such reports

yields to Calendar Wednesday business (VII, 899). It even takes precedence of the motion to reconsider (V, 5605), motions to go into the Committee of the Whole for consideration of general appropriation bills (VIII, 3291), consideration of District of Columbia business on Monday (VIII, 3292), unfinished business (Speaker O'Neill, Oct. 4, 1978, p. 33473), and motions to adjourn (V, 6451–6453), although as soon as the report is presented the motion to adjourn may be put (V, 6451–6453). Also the consideration of a conference report may be interrupted, even in the midst of the reading of the Statement, by the arrival of the hour previously fixed for a recess (V, 6524). While it may not be presented while the House is dividing, it may be presented after a vote by tellers and pending the question of ordering the yeas and nays (V, 6447). It also has precedence of a report from the Committee on Rules (V, 6449), and has been permitted to intervene when a special order provides that the House shall consider a certain bill "until the same is disposed of" (V, 6454). Of course, a question of privilege which relates to the integrity of the House as an agency for action may not be required to yield precedence to a matter entitled to priority merely by the rules relating to the order of business (V, 6454). The question of consideration under clause 3 of rule XVI may be demanded against a conference report before points of order against the report are raised (VIII, 2439; Speaker Albert, Sept. 28, 1976, p. 33019). The motion to lay on the table may not be applied to a conference report (V, 6540).

While the rule provides that the managers of the House asking for conference shall leave the papers with the managers of the other (§§ 555–556, *supra*), if the managers on the part of the House agreeing to a conference surrender the papers to the House asking the conference, the report may be received first by the House asking the conference (VIII, 3330).

For further discussion of conference reports, see provisions of Jefferson's Manual at §§ 527–559, *supra*.

§ 909a. Time for debate on motions to instruct.

(b) The time allotted for debate on any motion to instruct House conferees shall be equally divided between the majority and minority parties, except that if the proponent of the motion and the Member from the other party are both supporters of the motion, one-third of such debate time shall be allotted to a Member who is opposed to said motion.

This paragraph was added in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72). The division of debate time specified in this clause does not apply to an amendment to a motion after defeat of the previous question thereon, and the proponent of such an amendment is recognized for one

hour under clause 2 of rule XIV (Oct. 3, 1989, p. 22863; July 14, 1993, p. ——; Aug. 1, 1994, p. ——). The proponent of a motion to instruct conferees has the right to close debate (July 28, 1994, p. ——).

§910. Motions privileged after 20 calendar days of conference.

(c) After House conferees on any bill or resolution in conference between the House and Senate shall have been appointed for twenty calendar days and shall have failed to make a report, it is hereby declared to be a motion of the highest privilege to move to discharge said House conferees and to appoint new conferees, or to instruct said House conferees (but in either case only at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion); and, further, during the last six days of any sessions of Congress, it shall be a privileged motion to move to discharge, appoint, or instruct, House conferees after House conferees shall have been appointed thirty-six hours without having made a report.

This clause was adopted December 8, 1931 (VIII, 3225). The notice requirement was added on January 3, 1989 (H. Res. 5, 101st Cong., p. 72), and amended on January 5, 1993 (H. Res. 5, 103d Cong., p. ——) to clarify that both the motion to discharge conferees and appoint new conferees and the motion to instruct conferees after 20 days in conference are subject to one day's notice, and to authorize the Speaker to designate a time in that day's legislative schedule for the consideration of a noticed motion to discharge or instruct conferees. The motion to instruct conferees under this clause may be repeated notwithstanding prior disposition of an identical motion to instruct, since any number of proper motions to instruct are in order after conferees have not reported within 20 days (Speaker Albert, July 22, 1974, pp. 24448–49; July 10, 1985, p. 18440), and the motion remains available when a conference report, filed after 20 or more days in conference, is recommitted by the first House to act thereon, since the conferees are not discharged and the original conference remains in being (June 28, 1990, p. ——). A motion under this clause may instruct

House conferees to insist on holding conference sessions under just and fair conditions, and in executive session if desirable (Aug. 1, 1935, p. 12272), and may instruct House conferees to meet with Senate conferees (May 2, 1984, p. 10732). The motion to instruct conferees under this clause is of equal privilege with the motion to suspend the rules on a suspension day (Mar. 1, 1988, pp. 2749, 2751, 2754).

§911. The statement accompanying a conference report.

(d) Each report made by a committee of conference to the House shall be printed as a report of the House. As so printed, such report shall be accompanied by an explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate. Such statement shall be sufficiently detailed and explicit to inform the House as to the effect which the amendments or propositions contained in such report will have upon the measure to which those amendments or propositions relate.

The original rule requiring the submission of a statement was adopted in 1880 (V, 6443) and remained in effect through the 91st Congress. The following precedents are in interpretation of that rule, which required only that the statement be signed by a majority of the House managers (V, 6505, 6506), and did not anticipate a statement jointly prepared by the managers on the part of the House and those on the part of the Senate. The Speaker may require the statement to be in proper form (V, 6513), but it is for the House and not the Speaker to determine whether or not it conforms to the rule in other respects (V, 6511, 6512). A report may not be received without the accompanying statement (V, 6504, 6514, 6515). A quorum among the managers on the part of the House at a committee of conference is established by their signatures on the conference report and joint explanatory statement (Oct. 4, 1994, p. ——).

The rule was revised in the Legislative Reorganization Act of 1970 (sec. 125(b); 84 Stat. 1140) and made a part of the standing rules of the House in its present form in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144).

§911a. Unfunded mandates.

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4; 109 Stat. 48 *et seq.*) added a new part B to title IV of the Congressional Budget Act of 1974 (2 U.S.C. 658–658g) that, effective on January 1, 1996, or 90 days after appropriations are made available to the Congressional Budget Office pursuant to the 1995 Act (whichever is earlier), requires a committee of conference

to ensure that the Director of that Office prepares a statement with respect to unfunded costs of any additional Federal mandate contained in the conference agreement. See §1007, *infra*.

§912a. Consideration of conference reports.

2. (a) It shall not be in order to consider the report of a committee of conference until the third calendar day (excluding any Saturday, Sunday, or legal holiday) after such report and the accompanying statement shall have been filed in the House, and such consideration then shall be in order only if such report and accompanying statement shall have been printed in the daily edition of the Congressional Record for the day on which such report and statement shall have been filed; but the preceding provisions of this sentence do not apply during the last six days of the session. Nor shall it be in order to consider any conference report unless copies of the report and accompanying statement have been available to Members for at least two hours before the beginning of such consideration: *Provided, however,* That it shall always be in order to call up for consideration, notwithstanding the provisions of clause 4(b) of rule XI, a report from the Committee on Rules only making in order the consideration of a conference report notwithstanding this restriction. The time allotted for debate in the consideration of any such report shall be equally divided between the majority party and the minority party, except that if the floor manager for the majority and the floor manager for the minority are both supporters of the conference report, one third of such debate time shall be allotted to a

Member who is opposed to said conference report.

The original rule requiring that conference reports be printed in the Record was adopted in 1902 (V, 6516). The three-day layover requirement in paragraph (a), as well as its provisions relating to the availability of copies of the conference report and the division of time for debate, were added by section 125(b) of the Legislative Reorganization Act of 1970 and made part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). The first sentence of the clause was again amended the next year (H. Res. 1153, Oct. 13, 1972, p. 36023) to clarify the manner of counting the three days for the layover period.

The second sentence in paragraph (a) was amended, and its third sentence added, in the 94th Congress (Feb. 26, 1976, p. 4625) to require copies of conference reports to be available for two hours before consideration and to allow for the immediate consideration of a resolution from the Committee on Rules waiving that requirement. For an example of a resolution reported from the Committee on Rules only waiving the availability requirement of this clause and called up the same day reported without a two-thirds vote, see August 10, 1984 (p. 23978).

When managers report that they have been unable to agree, the report is not acted on by the House (V, 6562; VIII, 3329; Aug. 23, 1957, p. 15816).

Paragraph (a) was amended in the 99th Congress to provide that if both the floor manager for the majority and the floor manager for the minority support a conference report, the hour of debate thereon be divided three ways among the managers and a Member who is opposed (H. Res. 7, Jan. 3, 1985, p. 393). Recognition of one Member in opposition does not depend upon party affiliation and is within the discretion of the Speaker (Dec. 11, 1985, p. 36069; Dec. 16, 1985, p. 36716; Oct. 15, 1986, p. 31631), who accords priority in recognition to a member of the conference committee (Speaker Wright, Dec. 21, 1987, pp. 37093, 37516). Where the time is divided three ways, the right to close debate falls to the majority manager calling up the conference report, preceded by the minority manager, preceded in turn by the Member in opposition—*i.e.,* the reverse order of the recognition to begin debate (Aug. 4, 1989, p. 19301).

Following rejection of a conference report on a point of order, debate on a motion to dispose of the Senate amendment remaining in disagreement is evenly divided between the majority and minority under the rationale contained in clause 2(b) (Speaker Albert, Sept. 30, 1976, pp. 34074–34100).

§912b. Consideration of amendments in disagreement.

(b)(1) It shall not be in order to consider any amendment (including an amendment in the nature of a substitute) proposed by the Senate to any

measure reported in disagreement between the two Houses, by a report of a committee of conference that the committee has been unable to agree, until the third calendar day (excluding any Saturday, Sunday, or legal holiday) after such report and accompanying statement shall have been filed in the House, and such consideration then shall be in order only if such report and accompanying statement shall have been printed in the daily edition of the Congressional Record for the day on which such report and statement shall have been filed; but the preceding provisions of this sentence do not apply during the last six days of the session. Nor shall it be in order to consider any such amendment unless copies of the report and accompanying statement, together with the text of such amendment, have been available to Members for at least two hours before the beginning of such consideration: *Provided, however,* That it shall always be in order to call up for consideration, notwithstanding the provisions of clause 4(b) of rule XI, a report from the Committee on Rules only making in order the consideration of such an amendment notwithstanding this restriction. The time allotted for debate on any such amendment shall be equally divided between the majority party and the minority party, except that if the floor manager for the majority and the floor manager for the minority are both supporters of the original motion offered by the floor manager for the majority to dispose of the amendment, one third of such debate time shall

be allotted to a Member who is opposed to said motion.

Paragraph (b)(1), relating to the consideration of amendments reported from conference in disagreement, was added to the rule as paragraph (b) in 1972 (H. Res. 1153, Oct. 13, 1972, p. 36023) and became effective at the end of the 92d Congress.

The second sentence in paragraph (b)(1) of this clause was amended, and its third sentence added, in the 94th Congress (Feb. 26, 1976, p. 4625) to require copies of amendments reported from conference in disagreement to be available for two hours before consideration and to allow for the immediate consideration of a resolution from the Committee on Rules waiving that requirement.

Paragraph (b) was amended in the 99th Congress to provide that if both the floor manager for the majority and the floor manager for the minority support the original motion offered to dispose of an amendment reported from conference in disagreement, the hour of debate thereon be divided three ways, among the managers and a Member who is opposed (H. Res. 7, Jan. 3, 1985, p. 393). Recognition of one Member in opposition does not depend upon party affiliation and is within the discretion of the Speaker (Dec. 11, 1985, p. 36069; Dec. 16, 1985, p. 36716; Oct. 15, 1986, p. 31631), who accords priority in recognition to a member of the conference committee (Speaker Wright, Dec. 21, 1987, pp. 37093, 37516). The right to close the debate where the time is divided three ways falls to the manager offering the motion (Nov. 21, 1989, p. 30814).

The custom has developed, however, of equally dividing between majority and minority parties the time on all motions to dispose of amendments emerging from conference in disagreement, whether reported in disagreement or before the House upon rejection of a conference report by a vote or on a point of order (Speaker Albert, Sept. 27, 1976, pp. 32719–26; Sept. 30, 1976, pp. 34074–34100), upon rejection of an initial motion to dispose of the amendment (July 2, 1980, pp. 18357–59; Aug. 6, 1993, p. ——), on a motion to concur in a new Senate amendment where the Senate had receded with an amendment from one of its amendments reported from conference in disagreement (Mar. 24, 1983, p. 7301), or on a motion to dispose of a further stage of amendment which is subsequently before the House (Aug. 1, 1985, p. 22561; Dec. 19, 1985, p. 38360). A Member offering a preferential motion does not thereby control one-half of the time, as all debate is allotted under the original motion (May 14, 1975, p. 14385), subject to a possible three-way split among the majority and minority managers and a Member opposed to the motion (Sept. 12, 1994, p. ——). The minority Member in charge controls 30 minutes for debate only and can only yield to other Members for debate (Dec. 4, 1975, p. 38716). Where time for debate on such a motion is equally divided, the previous question may not be moved by the Member first recognized so as to prevent the Member from the other party from controlling half the debate and from

offering a proper preferential motion to dispose of the Senate amendment (July 2, 1980, p. 18360).

The division of time for debate on a motion to dispose of a Senate amendment reported from conference in disagreement under clause 2(b)(1) does not extend to separate debate on an amendment thereto, which is governed by clause 2 of rule XIV, the general hour rule in the House (Sept. 17, 1992, p. ——).

Until the adoption of paragraph (b), reports in total disagreement were not printed in the Record before the amendment in disagreement were again taken up in the House (VIII, 3299, 3332).

§912c. Certain motions to insist as preferential.

(2) During consideration of such an amendment to a general appropriation bill, if the original motion offered by the floor manager proposes to change existing law, then pending such original motion and before debate thereon one motion to insist on disagreement to the amendment proposed by the Senate shall be preferential to any other motion to dispose of that amendment if offered by the chairman of a committee having jurisdiction of the subject matter of the amendment or by a designee. Such a preferential motion shall be separately debatable for one hour equally divided between its proponent and the proponent of the original motion. The previous question shall be considered as ordered on such a preferential motion to its adoption without intervening motion.

Paragraph (b)(2) was added in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. ——) to make preferential and separately debatable a motion to insist on disagreement to a Senate amendment to a general appropriation bill, if: (1) the Senate amendment has been reported from conference in disagreement; (2) the original motion to dispose of the Senate amendment proposes to change existing law; and (3) the motion to insist is timely offered by the chairman of a committee of jurisdiction or a designee. The Committee on Post Office and Civil Service (now the Committee on Government Reform and Oversight) has jurisdiction under clause 1 of rule X over the subject of a Senate legislative amendment entitling Forest Service em-

ployees to separation pay, enabling the chairman of that committee to offer a preferential motion to insist under this clause (Oct. 20, 1993, p. ——).

§912d. Certain conference reports considered as read.

(c) Any conference report and Senate amendment in disagreement which has been available as provided in paragraphs (a) and (b) of this clause shall be considered as having been read when called up for consideration.

Paragraph (c) was added in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16).

§913a. Conferees may report germane modification of amendment in nature of substitute.

3. Whenever a disagreement to an amendment in the nature of a substitute has been committed to a conference committee it shall be in order for the Managers on the part of the House to propose a substitute which is a germane modification of the matter in disagreement, but the introduction of any language in that substitute presenting a specific additional topic, question, issue, or proposition not committed to the conference committee by either House shall not constitute a germane modification of the matter in disagreement. Moreover, their report shall not include matter not committed to the conference committee by either House, nor shall their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses if that modification is beyond the scope of that specific topic, question, issue, or proposition as so committed to the conference committee.

This provision is derived from section 135(a) of the Legislative Reorganization Act of 1946 (60 Stat. 812) and originally was made a part of the standing rules on January 3, 1953 (p. 24). The clause was revised on January 22, 1971 (p. 144) following the passage of the Legislative Reorganization Act of 1970 (84 Stat. 1140) which carried a similar provision in section 125(b). Where one House strikes out of a bill of the other all after the enacting clause and inserts a new text, House managers, under the restrictions of this clause, may not agree to the deletion of certain language committed to conference if the effect of such deletion results in broadening the scope of the matter in disagreement (Dec. 14, 1971, pp. 46779–80). Where one House authorizes certain funds for a fiscal year and the other House authorizes a lesser amount for that year as well as additional funds for the subsequent year, and neither version contains an overall amount, House managers do not exceed their authority under this rule by including in the report the amount authorized by one House for the first year and the other House for the subsequent year, even though the total authorization resulting from this compromise exceeds that possible under either version (June 8, 1972, pp. 20281–82). Where a House version authorized endowment payments for certain colleges and the Senate version conferred land-grant college status on those institutions and contained a higher endowment figure, House conferees remained within their authority under this clause by accepting the Senate provision on land-grant status and the lower House figure for endowment payments (Speaker Albert, June 8, 1972, pp. 20280–81). Where the House version of a bill contained provisions for local funding of merit schools, but neither version contained a provision for State funding, a motion to recommit to conference with instructions to provide State funding for merit schools was held to exceed the scope of the differences committed to conference (Sept. 30, 1992, p. ——).

While the scope of differences committed to conference—where one House has amended an existing law and the other House has implicitly taken the position of existing law by remaining silent on the subject—may properly be measured between those issues presented in the amending language and comparable provisions of existing law, the inclusion in a conference report of new matter not specifically contained in the amending version and not demonstrably contained in existing law may be ruled out as an additional issue not committed to conference in violation of this clause (Speaker Albert, Dec. 20, 1974, pp. 41849–50). Thus where one House has amended an existing law and the other House has implicitly taken the position of existing law by only authorizing sums for the purpose of existing law, the scope of differences committed to conference may be measured between issues presented in the amending language and relevant provisions of the existing law; but the inclusion in a conference report of requirements and issues incorporated into existing law which were not contained in either version and which are not repetitive of existing law may be ruled

out in violation of this paragraph (Speaker O'Neill, Oct. 14, 1977, pp. 33770–73).

A mere change in phraseology in a conference report (from language in either the House or Senate version) may be permitted to achieve legislative consistency where it is not shown that its effect is to broaden the scope of the language beyond the differences committed to conference, as where the report waives provisions of law for all programs in the bill and the House version waives those provisions for one section of the bill only (the Senate having no comparable provision) but the scope of programs covered by the report was co-extensive with those in the designated section of the House version (Speaker Albert, May 1, 1975, p. 12752). The conferees may include language clarifying and limiting the duties imposed on an official by one House's version where that modification does not expand the authority conferred in that version or contained in existing law (the position of the other House) (Speaker Albert, July 29, 1975, p. 25515) and may confer broader authority on an official than that contained in one House's version if such authority is co-extensive with the authority contained in existing law which the other House has retained (Speaker pro tempore McFall, Apr. 13, 1976, p. 10803). Where the Senate version authorized citizen suits to enforce existing law except where Federal officials were pursuing enforcement proceedings and the House version, with no comparable provision, retained existing law which did not permit such suits, the conferees exceeded the scope of the differences by further prohibiting citizen suits where State officials were pursuing enforcement proceedings—a new exception allowing State pre-emption of citizen suits (Speaker pro tempore McFall, Sept. 27, 1976, p. 33019). A point of order was sustained against a motion to instruct conferees since directing the conferees to agree to matter violating this clause: the House bill created an energy trust fund composed of certain revenues to be distributed by subsequent legislation; the Senate amendment created a similar trust fund with suggested but not mandated distribution, and the motion directed House conferees to insist on a mandatory allocation of revenues in question among specified purposes, some of which were not addressed in the Senate amendment (Feb. 28, 1980, pp. 4304–05).

Prior to the 1971 revision of this clause, where one House struck out of a bill of the other all after the enacting clause and inserted a new text, conferees could discard language occurring both in the bill and substitute (VIII, 3266) and exercise broad discretion in incorporating germane amendments (VIII, 3263–3265), even to the extent of reporting a new bill germane to the subject (V, 6421, 6423, 6424; VIII, 3248). But the present language of the rule prohibits the inclusion in a conference report or in a motion to instruct House conferees of additional topics not committed to conference by either House or beyond the scope of the differences committed to conference, and the precedents predating the adoption of this clause in 1971 must be read in light of the explicit restrictions now contained in the clause (Speaker pro tempore McFall, Sept. 27, 1976, pp. 32719–20); a conference

report may not include a new topic or issue that, although germane, was not committed to conference by either House (Apr. 9, 1992, p. ——). For example, a motion to instruct conferees on a general appropriation bill may not instruct the conferees to include a funding limitation not contained in the House bill or Senate amendment (Sept. 13, 1994, p. ——). Similarly, a motion to recommit a conference report may not instruct conferees to expand definitions to include classes not covered under the House bill or Senate amendment (Sept. 29, 1994, p. ——). Some latitude, however, remains to House managers to eliminate specific words or phrases contained in either version and add words or phrases not included in either version so long as they remain within the scope of the differences committed to conference and do not incorporate additional topics, issues, or propositions not committed to conference (Speaker Albert, Sept. 28, 1976, pp. 33020–23).

§913b. Nongermane matter in conference agreements.

4. (a) With respect to any report of a committee of conference called up before the House containing any matter which would be in violation of the provisions of clause 7 of rule XVI if such matter had been offered as an amendment in the House, and which—

(1) is contained in any Senate amendment to that measure (including a Senate amendment in the nature of a substitute for the text of that measure as passed by the House) accepted by the House conferees or agreed to by the conference committee with modification; or

(2) is contained in any substitute agreed to by the conference committee;

it shall be in order, at any time after the reading of the report has been completed or dispensed with and before the reading of the statement, or immediately upon consideration of a conference report if clause 2(c) of this rule applies, to make a point of order that such nongermane matter, as described above, which shall be specified in

the point of order, is contained in the report. For the purposes of this clause, matter which—

(A) is contained in any substitute agreed to by the conference committee;

(B) is not proposed by the House to be included in the measure concerned as passed by the House; and

(C) would be in violation of clause 7 of rule XVI if such matter had been offered in the House as an amendment to the provisions of that measure as so proposed in the form passed by the House;

shall be considered in violation of such clause 7.

(b) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(c) Notwithstanding the final disposition of any point of order made under paragraph (a), or of any motion to reject made pursuant to a point of order under paragraph (b), of this clause, it shall be in order to make further points of order on the ground stated in such paragraph (a), and motions to reject pursuant thereto under such paragraph (b), with respect to other nongermane matter in the report of the committee of conference not covered by any previous point of order which has been sustained.

(d) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the conference report shall be considered as rejected and the question then pending before the House shall be—

(1) whether to recede and concur in the Senate amendment with an amendment which shall consist of that portion of the conference report not rejected; or

(2) if the last sentence of paragraph (a) of this clause applies, whether to insist further on the House amendment.

If all such motions to reject are defeated, then, after the allocation of time for debate on the conference report as provided in clause 2(a) of this rule, it shall be in order to move the previous question on the adoption of the conference report.

The last sentence of clause 4(a) was added and clause 4(d) was amended on April 9, 1974 (H. Res. 998, 93d Cong., pp. 10195–99), to become effective on the thirtieth day after the adoption of the resolution, in order to make this clause applicable to provisions originally contained in Senate bills sent to conference, and not merely to Senate amendments to House bills in conference. The original clause 4 was included as part of the revision of rules XX and XXVIII that took place effective at the end of the 92d Congress (H. Res. 1153, Oct. 13, 1972, p. 36023). The same resolution repealed the existing clause 3 of rule XX, which had been enacted as part of the Legislative Reorganization Act of 1970 to restrict the authority of House conferees to agree without prior permission of the House to Senate amendments that would violate clause 7 of rule XVI if offered in the House. The clause was further amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to provide that if the conference report is considered read under clause 2(c) of this rule, a point of order under this clause must be made immediately upon consideration of the conference report.

The procedure provided in this clause was first utilized on September 11, 1973 (pp. 29243–46), when the Chair sustained two points of order against portions of a conference report which were modifications of portions

of a Senate amendment in the nature of a substitute not germane to a House bill. If any motion to reject is adopted under this clause and the matter then pending before the House consists of numbered Senate amendments in disagreement, the pending question is whether to dispose of each Senate amendment not rejected as recommended in the conference report and to insist on disagreement to those amendments which have been rejected.

Under paragraph (b) of this clause where a point of order against a portion of a conference report has been sustained under this clause, the Speaker will not entertain another point of order against the report or against another portion thereof until a motion to reject the portion held nongermane (if made) has been disposed of (Speaker Albert, Dec. 15, 1975, p. 40671). The Member representing the conference committee in opposition to a motion to reject under this clause, and not the proponent of the motion, has the right to close debate thereon (Oct. 15, 1986, p. 31502).

Once a motion to reject a nongermane portion has been adopted by the House and the Speaker has recognized a Member to offer a motion comprising the pending question under this clause, the report is rejected and it is too late to make a point of order against the entire conference report under clause 3 of this rule (Speaker Albert, Dec. 15, 1975, p. 40671).

Where possible, the Speaker rules on points of order against conference reports which if sustained will vitiate the entire conference report (as under clause 3 of this rule or under the Congressional Budget Act) before entertaining points of order under this clause (Speaker Albert, Sept. 23, 1976, pp. 32099–32100).

§ 913c. Nongermane matter in amendments in disagreement.

5. (a)(1) With respect to any amendment (including an amendment in the nature of a substitute) which—

(A) is proposed by the Senate to any measure and thereafter—

(i) is reported in disagreement between the two Houses by a committee of conference; or

(ii) is before the House, the stage of disagreement having been reached; and

(B) contains any matter which would be in violation of the provisions of clause 7 of rule XVI if such matter had been offered as an amendment in the House;

it shall be in order, immediately after a motion is offered that the House recede from its disagreement to such amendment proposed by the Senate and concur therein and before debate is commenced on such motion, to make a point of order that such nongermane matter, as described above, which shall be specified in the point of order, is contained in such amendment proposed by the Senate.

(2) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(3) Notwithstanding the final disposition of any point of order made under subparagraph (1), or of any motion to reject made pursuant to a point of order under subparagraph (2), of this paragraph, it shall be in order to make further points of order on the ground stated in such subparagraph (1), and motions to reject pursuant thereto under such subparagraph (2), with respect to other nongermane matter in the amendment proposed by the Senate not covered by any previous point of order which has been sustained.

(4) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the motion to recede

and concur shall be considered as rejected, and further motions—

(A) to recede and concur in the Senate amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);

(B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and

(C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur as provided in clause 2(b) of this rule, it shall be in order to move the previous question on such motion.

(b)(1) With respect to any such amendment proposed by the Senate as described in paragraph (a) of this clause, it shall not be in order to offer any motion that the House recede from its disagreement to such Senate amendment and concur therein with an amendment, unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration.

(2) Immediately after any such motion is offered and is in order and before debate is commenced on such motion, it shall be in order to make a point of order that nongermane matter, as described in subparagraph (1) of paragraph (a) of this clause, which shall be specified in the point of order, is contained in the language of the Senate amendment, as proposed to be amended by such motion, copies of which are then available on the floor.

(3) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(4) Notwithstanding the final disposition of any point of order under subparagraph (2), or of any motion to reject made pursuant to a point of order under subparagraph (3), of this paragraph, it shall be in order to make further points of order on the ground stated in subparagraph (1) of paragraph (a) of this clause, and motions to reject pursuant thereto under subparagraph (3) of this paragraph, with respect to other nongermane matter in the language of the Senate amendment, as proposed to be amended by the motion described in subparagraph (1) of this paragraph, not covered by any previous point of order which has been sustained.

(5) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this paragraph, the motion to recede and concur in the Senate amendment with an amendment shall be considered as rejected, and further motions—

(A) to recede and concur in the Senate amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);

(B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and

(C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur in the Senate amendment with an amendment as provided in clause 2(b) of this rule, it shall be in order to move the previous question on such motion.

(c) If, on a division of a motion that the House recede and concur, with or without amendment, from its disagreement to any such Senate amendment as described in paragraph (a)(1) of this clause, the House agrees to recede, then, be-

fore debate is commenced on concurring in such Senate amendment, or on concurring therein with an amendment, it shall be in order to make and dispose of points of order and motions to reject with respect to such Senate amendment in accordance with applicable provisions of this clause and to effect final determination of these matters in accordance with such provisions.

This clause was added on April 9, 1974 (H. Res. 998, 93d Cong., pp. 10195–99) which deleted from clause 1 of rule XX and transferred to this clause the procedures concerning disposition of Senate non-germane amendments. Clause 5(b) was first utilized on July 31, 1974, p. 26083, when the Chair sustained a point of order against a portion of a motion to recede and concur in a Senate amendment (reported from conference in disagreement) with a further amendment, on the ground that that portion of the Senate amendment contained in the motion was not germane to the House-passed measure, and a motion rejecting that portion of the motion to recede and concur with an amendment was offered and defeated. Clause 5(b) is not applicable to a provision contained in a motion to recede and concur with an amendment which was not contained in any form in the Senate version and which is not therefore a modification of the Senate provision, the only requirement in such circumstances being that the motion as a whole be germane to the Senate amendment as a whole under clause 7 of rule XVI (Speaker pro tempore Kazen, Oct. 4, 1978, p. 33502; June 30, 1987, p. 18294). A point of order under clause 5 of rule XXI (appropriations on a legislative bill) against a motion to dispose of a Senate amendment in disagreement which, if sustained, would vitiate the entire motion, must be disposed of prior to a point of order under this clause which, if sustained, would merely permit a separate vote on rejection of that portion of the motion (Oct. 1, 1980, pp. 28638–42).

§913d. Open conference meetings.

6. (a) Each conference committee meeting between the House and Senate shall be open to the public except when the House, in open session, has determined by a rollcall vote of a majority of those Members voting that all or part of the meeting shall be closed to the public.

(b)(1) After the reading of the report and before the reading of the joint statement, or imme-

diately upon consideration of a conference report if clause 2(c) of this rule applies, a point of order may be made that the committee of conference making the report to the House has failed to comply with paragraph (a) of this clause.

(2) If such point of order is sustained, the conference report shall be considered as rejected, the House shall be considered to have insisted upon its amendment(s) or upon disagreement to the amendment(s) of the Senate, as the case may be, and to have requested a further conference with the Senate, and the Speaker shall be authorized to appoint new conferees without intervening motion.

This clause as originally added to rule XXVIII on January 14, 1975 (H. Res. 5, 94th Cong., p. 20) provided that conference committee meetings be open except where a majority of the managers of the House or Senate voted to close the meeting, and provided that the clause not become effective until the Senate adopted a similar rule. The Senate adopted an identical rule on November 5, 1975, p. 35203. The clause was substantially changed on January 4, 1977 (H. Res. 5, 95th Cong., pp. 53–70) to require that conference meetings be open except where the House by rollcall vote determines that a meeting may be closed, to allow a point of order against a conference report where the conferees have violated this clause, and to provide for subsequent disposition of the matter reported from conference should such a point of order be sustained, and was further amended in the 96th Congress (H. Res. 5, Jan. 5, 1979, pp. 7–16) to provide that if the conference report is considered read under clause 2(c) of this rule, a point of order under this clause must be made immediately upon consideration of the conference report.

At any time after a bill has been sent to conference and conferees have been appointed by the Speaker, a motion pursuant to this clause authorizing a conference committee to close its meetings to the public is privileged for consideration in the House, is debatable for one hour within the control of the Member offering the motion, and must be voted on by a rollcall vote (Speaker O'Neill, May 23, 1977, pp. 15880–84; Apr. 13, 1978, p. 10128). While the Chair does not normally look behind signatures of conferees to determine the propriety of conference procedure, if proposed conferees have signed a conference report before they have been formally appointed in both Houses and do not meet formally in open session after such appoint-

ment, the conference report is subject to a point of order under this clause resulting in an automatic request for a further conference (Dec. 20, 1982, p. 32896). Although a motion to close a conference committee meeting "to the public" would, under the precedents (see V, 6254, fn.), exclude Members who were not conferees, a motion may be offered as privileged under this clause to authorize a conference committee to close its meetings to the public, except to Members of Congress (Speaker O'Neill, May 23, 1977, pp. 15880–84).

Clause 11 of rule XLVIII, adopted on July 14, 1977 (H. Res. 658, pp. 22932–49), provides that this paragraph does not apply to conference committee meetings respecting legislation (or any part thereof) reported from the Permanent Select Committee on Intelligence.

Rule XXIX.

SECRET SESSION.

§914. Secret session of the House.

Whenever confidential communications are received from the President of the United States, or whenever the Speaker or any Member shall inform the House that he has communications which he believes ought to be kept secret for the present, the House shall be cleared of all persons except the Members and officers thereof, and so continue during the reading of such communications, the debates and proceedings thereon, unless otherwise ordered by the House.

This rule, in a somewhat different form, was adopted in 1792, although secret sessions had been held by the House before that date. They continued to be held at times with considerable frequency until 1830. In 1880, at the time of the general revision of the rules, the House concluded to retain the rule, although it had been long in disuse (V, 7247; VI, 434).

The two Houses have legislated in secret session, transmitting their messages also in secrecy (V, 7250); but the House has declined to be bound to secrecy by act of the Senate (V, 7249). Motions to remove the injunction of secrecy should be made with closed doors (V, 7254). In 1843 a confidential message from the President was referred without reading; but no motion was made for a secret session (V, 7255).

The House and not the Committee of the Whole determines whether the Committee may sit in executive session, and an inquiry relative to whether the Committee of the Whole should sit in secret session is properly