

Public Law 95-473
95th Congress

An Act

To revise, codify, and enact without substantive change the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, "Transportation".

Oct. 17, 1978

[H.R. 10965]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted as title 49, United States Code, "Transportation", as follows:

Interstate
Commerce Act
and related laws.
Enactment as title
49, Subtitle IV,
U.S. Code.

TITLE 49—TRANSPORTATION

SUBTITLE

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SUBTITLE IV—INTERSTATE COMMERCE

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§ 10101. Transportation policy

49 USC 10101.

(a) To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to provide for the impartial regulation of the modes of transportation subject to this subtitle, and in regulating those modes—

- (1) to recognize and preserve the inherent advantage of each mode of transportation;
- (2) to promote safe, adequate, economical, and efficient transportation;
- (3) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;
- (4) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

- (5) to cooperate with each State and the officials of each State on transportation matters; and
- (6) to encourage fair wages and working conditions in the transportation industry.

(b) This subtitle shall be administered and enforced to carry out the policy of this section.

49 USC 10102.

§ 10102. Definitions

In this subtitle—

(1) “broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(2) “carrier” means a common carrier and a contract carrier.

(3) “car service” includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier.

(4) “common carrier” means an express carrier, a pipeline carrier, a rail carrier, a sleeping car carrier, a motor common carrier, a water common carrier, and a freight forwarder.

(5) “contract carrier” means a motor contract carrier and a water contract carrier.

(6) “control”, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means.

(7) “express carrier” means a person providing express transportation for compensation.

(8) “freight forwarder” means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title.

(9) “highway” means a road, highway, street, and way in a State.

(10) “motor carrier” means a motor common carrier and a motor contract carrier.

(11) “motor common carrier” means a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both.

(12) “motor contract carrier” means a person, other than a motor common carrier, providing motor vehicle transportation for compensation under continuing agreements with a person or a limited number of persons—

(A) by assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

(B) designed to meet the distinct needs of each such person.

(13) "motor private carrier" means a person, other than a motor carrier, transporting property by motor vehicle when—

(A) the transportation is as provided in section 10521(a)

(1) and (2) of this title;

(B) the person is the owner, lessee, or bailee of the property being transported; and

(C) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

(14) "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Commission, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

(15) "person", in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

(16) "pipeline carrier" means a person providing pipeline transportation for compensation.

(17) "rail carrier" means a person providing railroad transportation for compensation.

(18) "railroad" includes—

(A) a bridge, car float, lighter, and ferry used by or in connection with a railroad;

(B) the road used by a rail carrier and owned by it or operated under an agreement; and

(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.

(19) "rate" means a rate, fare, or charge for transportation.

(20) "sleeping car carrier" means a person providing sleeping car transportation for compensation.

(21) "State" means a State of the United States and the District of Columbia.

(22) "tariff", when used in reference to a contract carrier, means a schedule.

(23) "transportation" includes—

(A) a locomotive, car, vehicle, motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.

(24) "United States" means the States of the United States and the District of Columbia.

(25) "vessel" means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

Post, p. 1361.

(26) "water carrier" means a water common carrier and a water contract carrier.

(27) "water common carrier" means a person holding itself out to the general public to provide water transportation for compensation.

(28) "water contract carrier" means a person, other than a water common carrier, providing water transportation for compensation under an agreement with another person, including transportation on a vessel provided to a person other than a carrier subject to the jurisdiction of the Commission under this subtitle when the vessel is used to transport only the property of the other person.

49 USC 10103.

§ 10103. Remedies as cumulative

The remedies provided under this subtitle are in addition to remedies existing under another law or at common law.

CHAPTER 103—INTERSTATE COMMERCE COMMISSION

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SUBCHAPTER I—ORGANIZATION

§ 10301. General

49 USC 10301.

(a) The Interstate Commerce Commission is an independent establishment of the United States Government.

(b) The Commission is composed of 11 members appointed by the President, by and with the advice and consent of the Senate. The President shall designate one of the members as Chairman. Not more than 6 members may be appointed from the same political party.

Membership.
Chairman.

(c) The term of each member of the Commission is 7 years and begins when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

Term.

(d) A member of the Commission may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

(e) A vacancy in the membership of the Commission does not impair the right of the remaining members to exercise all of the powers of the Commission. The Commission may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

(f) Subject to the general policies, decisions, findings, and determinations of the Commission, the Chairman is responsible for administering the Commission. The Chairman may delegate the powers granted under this subsection to an officer, employee, or administrative unit of the Commission. The Chairman shall—

Responsibilities.

(1) appoint and supervise, other than regular and full time employees in the immediate offices of another member, the officers and employees of the Commission, including attorneys to provide legal aid and service to the Commission and its members, to represent the public interest in investigations and proceedings of the Commission, and to represent the Commission in any case in court;

(2) appoint the heads of major administrative units with the approval of the Commission;

(3) distribute Commission business among officers and employees and administrative units of the Commission;

(4) prepare requests for appropriations for the Commission and submit those requests to the President and Congress with the prior approval of the Commission; and

(5) supervise the expenditure of funds allocated by the Commission for major programs and purposes.

(g) The Commission shall have a seal that shall be judicially recognized.

(h) The expenses of the Commission shall be paid after presentation and approval by the Chairman of itemized vouchers.

49 USC 10302.

§ 10302. Divisions of the Commission

(a) The Interstate Commerce Commission may establish and assign Commissioners to serve on as many divisions as may be necessary and may designate any division as an appellate division. Each division shall be composed of at least 3 Commissioners. The Commission may assign a Commissioner to serve on more than one division.

(b) Unless otherwise directed by the Commission—

(1) the Commissioner senior in service of the Commissioners on a division is chairman of the division; and

(2) the Chairman of the Commission, or another Commissioner designated by the Chairman, may serve on a division temporarily, when there is a vacancy in the membership of the division or when another Commissioner is absent or unable to serve.

(c) The Commission shall designate each division numerically or by a term descriptive of the function of that division.

49 USC 10303.

§ 10303. Secretary of the Commission; public records

(a) The Chairman of the Interstate Commerce Commission, with its approval, shall appoint the Secretary of the Commission.

(b) The Secretary is the custodian of public records filed with the Commission. Copies of classifications, tariffs, and all arrangements filed with the Commission under this subtitle, and the statistics, tables, and figures contained in reports made to the Commission under this subtitle, are public records. A public record, or a copy or extract of it, certified by the Secretary under the seal of the Commission is competent evidence in a proceeding of the Commission and in a judicial proceeding.

49 USC 10304.

§ 10304. Employee boards

The Interstate Commerce Commission may establish employee boards composed of at least 3 employees. An employee who is a director or assistant director of a bureau, a chief of a section, an employee designated by the Commission, or an attorney may serve on a board.

49 USC 10305.

§ 10305. Delegation of authority

(a) The Interstate Commerce Commission may delegate to a division, an individual Commissioner, an employee board, or an employee appointed under section 3105 of title 5, a matter before the Commission for action, including a matter referred to it by either House of Congress or by Congress. However, the Commission may not delegate a matter required to be referred to a joint board under section 10341 of this title, or a function vested in the Commission under this chapter. The Commission may change or rescind a delegation under this subsection at any time. When a Commissioner or employee cannot act on a matter delegated under this section because of absence or another reason, the Chairman of the Commission may designate another Commissioner or employee, as the case may be, to serve temporarily until the Commission otherwise orders.

(b) Delegation to a division of a matter related to the validity of rates shall be made according to the character of regulation exercised.

The delegation of any such matter may not be made according to the kind or class of carrier involved or to the form or mode of transportation in which that carrier may be engaged.

(c) A division, individual Commissioner, employee board, or an employee may act on a matter delegated under subsection (a) of this section. When acting under this section, a division, individual Commissioner, board, or an employee has the same power and authority and is subject to the same duties and obligations as the Commission. Action taken under this section has the same force and is taken in the same manner as if taken by the Commission.

§ 10306. Conduct of proceedings

49 USC 10306.

(a) A majority of the Interstate Commerce Commission, a division, or an employee board is a quorum for the transaction of business. A Commissioner, the Secretary of the Commission, a member of an employee board, or an employee delegated to act under section 10305 of this title may administer oaths.

(b) A party may appear and be heard before the Commission, a division, an individual Commissioner, a board, or an employee delegated to act under section 10305 of this title in person or by an individual admitted to practice under section 10308 of this title. A hearing before the Commission, a division, an individual Commissioner, a board, or an employee shall be made public on the request of an interested party.

(c) The Commission shall conform its forms for giving notice and their manner of service, to the extent practical, to those used by the courts of the United States.

(d) Votes and other official acts of the Commission, a division, an individual Commissioner, an employee board, or an employee delegated to act under section 10305 of this title shall be recorded and shall be made public on the request of an interested party.

(e) A member of a board and an employee delegated to act under section 10305 of this title may not have a pecuniary interest in, hold an official relation to, or own securities of a carrier providing transportation by any mode.

(f) The Commission shall review at least once every 3 years and revise as necessary the rules of practice for matters related to rail carriers adopted under section 305(c) of the Railroad Revitalization and Regulatory Reform Act of 1976 (90 Stat. 53).

Rail carriers
practice rules,
review.

49 USC 17 note.

49 USC 10307.

§ 10307. Office and sessions

(a) The principal office of the Interstate Commerce Commission is in the District of Columbia. Until otherwise provided by law, the Commission may obtain suitable offices for its use and may procure all necessary office supplies.

(b) General sessions of the Commission are held at its principal office. However, the Commission may hold special sessions in any part of the United States, for the convenience of the public or the parties and to avoid delay and expense. The Commission, an individual Commissioner, an employee board, or an employee delegated to act under section 10305 of this title may conduct proceedings under this subtitle in any part of the United States for the convenience of the parties.

§ 10308. Admission to practice

49 USC 10308.

Subject to section 500 of title 5, the Interstate Commerce Commission may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

Fee.

49 USC 10309. **§ 10309. Access to records by congressional committees**

Report to
congressional
committee.

(a) When the Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Commerce, Science, and Transportation of the Senate makes a written request for a record in the possession or under the control of the Interstate Commerce Commission related to a matter involving a rail carrier providing transportation subject to this subtitle, the Commission shall send that record or a copy to the committee by the 10th day after the date of receipt of the request. If the record is not sent, the Commission shall send a written report to that committee within the 10-day period stating the reason why the record has not been sent and the anticipated date on which it will be sent. If the Commission transfers a record in its possession or under its control to another department, agency, or instrumentality of the United States Government, or to a person, it must condition the transfer on the guaranteed return of the record by the transferee to the Commission so that the Commission can comply with this subsection.

(b) Subsection (a) of this section does not apply to a record obtained by the Commission from a person subject to regulation by it if the record contains trade secrets or commercial or financial information of a privileged or confidential nature. Subsection (a) of this section does not limit other authority of Congress, either House of Congress, or a committee or subcommittee of either House, to obtain a record.

49 USC 10310. **§ 10310. Reporting official action**

(a) The Interstate Commerce Commission shall make a written report of each proceeding conducted on complaint or on its own initiative and furnish a copy to each party to that proceeding. The report shall include the findings, conclusions, and the order of the Commission and, if damages are awarded, the findings of fact supporting the award. The Commission may have its reports published for public use. A published report of the Commission is competent evidence of its contents.

(b) (1) When action of the Commission in a matter related to a rail carrier is taken by the Commission, a division, a group of Commissioners, an individual Commissioner, an employee board, an employee delegated to act under section 10305 of this title, or another individual or group of individuals designated to take official action for the Commission, the written statement of that action (including a report, order, decision and order, vote, notice, letter, policy statements, or regulation) shall indicate—

(A) the official designation of the individual or group taking the action;

(B) the name of each individual taking, or participating in taking, the action; and

(C) the vote or position of each participating individual.

(2) If an individual member of a group taking an official action referred to in paragraph (1) of this subsection does not participate in it, the written statement of the action shall indicate that the member did not participate. An individual participating in taking an official action is entitled to express the views of that individual as part of the written statement of the action. In addition to any publication of the written statement, it shall be made available to the public under section 552(a) of title 5.

§ 10311. Annual report

49 USC 10311.

The Interstate Commerce Commission shall prepare and send to Congress an annual report before April 3 of each year. The Commission shall include in the annual report information that may be of value in answering questions related to regulation of transportation and the names and pay of individuals employed by the Commission. The Commission may include in its annual report, or send to Congress at any time, recommendations for additional legislation related to regulation of transportation.

Submittal to
Congress.

SUBCHAPTER II—ADMINISTRATIVE**§ 10321. Powers**

49 USC 10321.

(a) The Interstate Commerce Commission shall carry out this subtitle. Enumeration of a power of the Commission in this subtitle does not exclude another power the Commission may have in carrying out this subtitle. The Commission may prescribe regulations in carrying out this subtitle.

Regulations.

(b) The Commission may—

(1) inquire into and report on the management of the business of carriers providing, and brokers for, transportation and service subject to this subtitle;

(2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker; and

(3) obtain from those carriers, brokers, and persons information the Commission decides is necessary to carry out this subtitle.

(c) (1) The Commission, an individual Commissioner, an employee board, and an employee delegated to act under section 10305 of this title may subpoena witnesses and records related to a proceeding of the Commission from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Commission, or a party to a proceeding before the Commission, may petition a court of the United States to enforce that subpoena.

Subpenas.

(2) Subpenas may be signed by a Commissioner, the Secretary of the Commission, or a member of a board when the subpoena relates to a matter delegated to the board under section 10305 of this title.

(3) The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

(d) (1) In a proceeding, the Commission may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending before the Commission may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

Depositions.

(2) If a witness fails to be deposed or to produce records under paragraph (1) of this subsection, the Commission may subpoena the witness to take a deposition, produce the records, or both.

(3) A deposition may be taken before a judge of a court of the United States, a United States magistrate, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor

or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Commission or agreed on by the parties by written stipulation filed with the Commission. A deposition shall be filed with the Commission promptly.

(e) Each witness summoned before the Commission or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

49 USC 10322.

§ 10322. Initial decisions—nonrail proceedings

Filing.

(a) When testimony is taken at a public hearing, an individual Commissioner, an employee board, or an employee delegated to act under section 10305 of this title shall issue an initial decision that includes a statement of reasons for the decision and an order. The decision and order shall be filed with the Interstate Commerce Commission. An initial decision becomes an action of the Commission on the 20th day after the initial decision is served on the interested parties, including persons referred to in section 10328(b) of this title if the proceeding involves a motor carrier, unless—

(1) an exception to the initial decision is filed by an interested party during that 20-day period or by the end of an extended period if authorized by the Commission, or a division or board designated by the Commission; or

(2) the Commission, or a division or board designated by the Commission, stays or postpones the initial decision.

Review.

(b) Before an initial decision of an individual Commissioner, a board, or an employee becomes an action of the Commission, a division or board designated by the Commission, or the Commission, may review the initial decision on its own initiative and shall review the initial decision if exception to it is filed under subsection (a)(1) of this section. An initial decision may be reviewed on the record on which it is based or by a further hearing. If an initial decision is reviewed, it is stayed or postponed pending final determination of the matter, and it is an action of the Commission only after the final determination is made.

49 USC 10323.

§ 10323. Rehearing, reargument, and reconsideration—nonrail proceedings

(a) The Interstate Commerce Commission may grant rehearing, reargument, or reconsideration of a decision that has become an action of the Commission. A party to the proceeding may apply for rehearing, reargument, or reconsideration under Commission regulations. Except as provided in subsection (b)(2) of this section, the Commission

may limit the right to apply for rehearing, reargument, or reconsideration of a decision of the Commission or a division to a proceeding or class of proceedings involving issues of general transportation importance.

(b) (1) An application for rehearing, reargument, or reconsideration shall be considered and acted on—

(A) by the Commission if the action of the Commission was taken by it; or

(B) by the Commission, or by an appellate division designated by the Commission, if the initial decision was made by a division, individual Commissioner, board, or employee.

(2) An application for rehearing, reargument, or reconsideration shall be granted and referred to an appellate division for action if—

(A) the matter was delegated for an initial decision to an individual Commissioner, board, or employee;

(B) the application is filed by the 20th day after the date the initial decision became an action of the Commission under section 10322(a) of this title; and

(C) the matter has not been previously reviewed under section 10322(b) of this title.

(c) The Commission or an appellate division may change a decision of a division, an individual Commissioner, board, or employee if the decision appears unreasonable after rehearing, reargument, or reconsideration. However, the subsequent decision is subject to rehearing, reargument, or reconsideration under this section.

§ 10324. Commission action

49 USC 10324.

(a) Unless otherwise provided in this subtitle, the Interstate Commerce Commission may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect. However, an action of the Commission in a proceeding involving a motor carrier, a broker, a water carrier, or freight forwarder may not take effect for 30 days.

(b) An action of the Commission remains in effect under its own terms or until superseded. The Commission may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Commission. A court of competent jurisdiction may suspend or set aside any such action.

(c) An action of the Commission is enforceable unless—

(1) application for rehearing, reargument, or reconsideration is made under section 10323 of this title before the effective date of the action; or

(2) the Commission stays or postpones the action.

§ 10325. Judicial review—nonrail proceedings

49 USC 10325.

A civil action to enforce, enjoin, suspend, or set aside an action of the Interstate Commerce Commission taken by a division, individual Commissioner, employee board, or employee delegated to act under section 10305 of this title may be started in a court of the United States only—

(1) on denial of an application for rehearing, reargument, or reconsideration; or

(2) if the application is granted, after a rehearing, reargument, reconsideration or other disposition by the Commission or an appellate division under section 10323 of this title.

49 USC 10326.

§ 10326. Limitations in rulemaking proceedings related to rail carriers

Petitions.

(a) When, under section 553(e) of title 5, an interested person (including a governmental authority) petitions the Interstate Commerce Commission to begin a rulemaking proceeding in a matter related to a rail carrier providing transportation subject to this subtitle, the Commission, or a division, an individual Commissioner, an employee board, an employee delegated to act under section 10305 of this title, or another person authorized to act on behalf of the Commission for any part of the proceeding, shall grant or deny that petition by the 120th day after receiving it. If the petition is granted, the Commission, or its delegate, shall begin an appropriate proceeding as soon as practicable. If the petition is denied, the reasons for the denial shall be published in the Federal Register.

Publication in
Federal Register.
Civil action.

(b) (1) If a petition is denied or action is not taken within the 120-day period under subsection (a) of this section, the petitioner may begin a civil action in an appropriate court of appeals of the United States for an order directing the Commission to begin a proceeding to take the action requested in the petition. A civil action under this subsection must be filed by the 60th day after the date of the denial or by the 60th day after the end of the 120-day period, whichever is appropriate.

(2) The court of appeals shall order the Commission to begin the action requested in the petition to the Commission if the court finds that the action requested in that petition is necessary and failure to take that action will result in the continuation of practices that are not consistent with the public interest or are not in accordance with this subtitle. The finding of the court must be based on a preponderance of the evidence in the record before the Commission or its delegate, or, if the civil action is based on a petition on which action was not taken, in a new proceeding before the court. The court may not require the Commission to take action under this subtitle other than to begin a rulemaking proceeding.

49 USC 10327.

§ 10327. Commission action and appellate procedure in rail carrier proceedings

(a) Notwithstanding sections 10322, 10323, and 10324(c) of this title, this section applies to a matter before the Interstate Commerce Commission involving a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title. However, other sections of this subtitle related to action of the Commission in proceedings involving rail carriers supersede this section to the extent that they are inconsistent with the provisions of this section related to deadlines.

Initial decisions.

(b) A division, individual Commissioner, employee board, or employee delegated under section 10305 of this title to make an initial decision in a matter related to one of those rail carriers shall complete all evidentiary proceedings related to the matter by the 180th day after assignment of the matter. The initial decision shall be submitted to the Commission in writing. If evidence is submitted in writing or testimony is taken at a public hearing, the initial decision shall be submitted to the Commission in writing by the 120th day after completion of all evidentiary proceedings and shall include—

- (1) specific findings of fact;
- (2) specific and separate conclusions of law;

(3) an order; and

(4) justification of the findings of fact, conclusions of law, and order.

(c) The Commission, or a division designated by the Commission, may void the requirement of an initial decision under subsection (b) of this section and may require the matter to be considered by the Commission or that division on finding that the matter involves a question of Commission policy, a new or novel issue of law, or an issue of general transportation importance, or that it is required for the timely execution of its functions.

(d) In a proceeding under this section, after the parties have had at least an opportunity to submit evidence in written form, the Commission shall give them an opportunity for briefs, written statements, or conferences of the parties. A conference of the parties must be chaired by a division, an individual Commissioner, an employee board, an employee delegated to act under section 10305 of this title, or an employee designated by the Commission.

(e) Copies of an initial decision under subsection (b) of this section shall be served on the interested parties. An initial decision becomes an action of the Commission on the 20th day after it is served on the interested parties, unless—

(1) an interested party files an appeal during the 20-day period, or by the end of an additional period of not more than 20 days, if authorized by the Commission or division designated by the Commission; or

(2) the Commission stays or postpones the initial decision under subsection (g) (2) or (j) of this section within the period or additional period referred to in clause (1) of this subsection.

(f) (1) Before an initial decision becomes an action of the Commission, the Commission, or a division or board designated by the Commission, may review the initial decision on its own initiative, and shall review an initial decision if an appeal is filed under subsection (e) (1) of this section. However, a board may not decide an appeal from an initial decision if the appeal may be further appealed to the Commission.

Review.

(2) An initial decision may be reviewed on the record on which it is based or by a further hearing. If an initial decision is reviewed, it shall be stayed pending final determination of the matter, and it is an action of the Commission only after the final determination is made. If an appeal is filed under subsection (e) (1) of this section, the final determination shall be made by the 180th day after the appeal is filed.

(3) Review of, or appeal from, an initial decision shall be conducted under section 557 of title 5. The Commission may prescribe rules limiting and defining the issues and pleadings on review under section 557 (b) of that title.

Rules.

(g) (1) The Commission may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

(A) reopen a proceeding;

(B) grant rehearing, reargument, or reconsideration of an action of the Commission; and

(C) change an action of the Commission.

An interested party may petition to reopen and reconsider an action of the Commission under this paragraph under regulations of the Commission.

Petition.

(2) The Commission may grant a rehearing, reargument, or reconsideration of an action of the Commission that was taken by a division designated by the Commission if it finds that—

(A) the action involves a matter of general transportation importance; or

(B) the action would be affected materially because of clear and convincing new evidence or changed circumstances.

Petition.

An interested party may petition for rehearing, reargument, or reconsideration of an action of the Commission under this paragraph under regulations of the Commission. The Commission may stay an action pending a final determination under this paragraph. The Commission shall complete reconsideration and take final action by the 120th day after the petition is granted.

(h) An action of the Commission under this section and an action of a designated division under subsection (c) of this section is effective on the 30th day after service on the parties to the proceeding unless the Commission provides for it to become effective on an earlier date.

(i) Notwithstanding this subtitle, an action of the Commission under this section and an action of a designated division under subsection (c) of this section is final on the date on which it is served, and a civil action to enforce, enjoin, suspend, or set aside the action may be filed after that date.

Extensions.

(j) The Commission may extend a time period established by this section for a period of not more than 90 days. The extension shall be granted if a majority of the Commissioners agree to it by public vote. The Commission shall send a written annual report to each House of Congress about extensions granted under this subsection. The report shall specify each extension granted (classified by the type of proceeding involved) together with the reasons for and duration of each extension.

Annual report to Congress.

(k) If an extension granted under subsection (j) of this section is not sufficient to allow for completion of necessary proceedings, the Commission may grant a further extension in an extraordinary situation if—

(1) at least 7 Commissioners agree to the further extension by public vote; and

(2) not later than the 15th day before expiration of the extension granted under subsection (j) of this section, the Commission submits a written report to the Congress that a further extension has been granted. The report shall include—

(A) a full explanation of the reasons for the further extension;

(B) the anticipated duration of the further extension;

(C) the issues involved in the matter before the Commission; and

(D) the names of personnel of the Commission working on the matter.

49 USC 10328.

§ 10328. Intervention

(a) Designated representatives of employees of a carrier may intervene and be heard in a proceeding arising under this subtitle that affects those employees.

(b) Under regulations of the Interstate Commerce Commission, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this subtitle related to transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title that is, or is proposed to be, provided in a State shall

be given to interested persons and to the authority of that State having jurisdiction to regulate transportation by motor vehicles in intrastate commerce on the highways of that State, or, if there is no such authority, to the chief executive officer of the State.

§ 10329. Service of notice in Commission proceedings

49 USC 10329.

(a) (1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall designate an agent in the District of Columbia, on whom service of notices in a proceeding before, and of actions of, the Commission may be made.

Agent designation.

(2) A motor carrier, a broker, a water carrier, or a freight forwarder providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 of this title shall designate an agent by name and post office address on whom service of notices in a proceeding before, and of actions of, the Commission may be made.

(b) A designation under subsection (a) of this section shall be in writing and filed with the Commission. A motor carrier or broker providing transportation under a certificate or permit issued under this subtitle shall also file the designation with the authority of each State in which it operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. The designation may be changed at any time in the same manner as originally made.

(c) Except as otherwise provided, notices of the Commission shall be served as follows:

(1) A notice of the Commission to a rail, express, sleeping car, or pipeline carrier is served on its designated agent at the office or usual place of residence in the District of Columbia of that agent. A notice of action of the Commission shall be served immediately on the agent or in another manner provided by law. If that carrier does not have a designated agent, service may be made by posting the notice in the office of the Secretary of the Commission.

(2) A notice to a motor carrier or broker is served personally or by mail on the motor carrier or broker or its designated agent. Service by mail on the designated agent is made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when the notice is served. If a motor carrier or broker does not have a designated agent, service may be made by posting a copy of the notice in the office of the secretary or clerk of the authority having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of the State in which the carrier or broker maintains headquarters and in the office of the Secretary of the Commission.

(3) A notice to a water carrier or freight forwarder is served personally or by mail on the water carrier or freight forwarder or its designated agent. Service by mail on the designated agent is made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when notice is served. If a water carrier or freight forwarder does not have a designated agent, service may be made by posting the notice in the office of the Secretary of the Commission.

(d) In a proceeding involving the lawfulness of classifications, rates, or practices of (1) a rail, express, sleeping car, or pipeline car-

rier that has not designated an agent under this section, or (2) a freight forwarder, service of notice of the Commission on an attorney in fact who filed the tariff for the carrier constitutes service of notice on the carrier.

(e) In a proceeding involving the lawfulness of classifications, rates, or practices—

(1) service of notice of the suspension of a tariff on an attorney in fact of a carrier or broker, except a freight forwarder, constitutes service of notice on the carrier or broker if that attorney filed the tariff and, if the carrier is a water carrier, the notice specifies the classifications, rates, or practices involved; and

(2) service of notice of the suspension of a joint tariff or schedule on a carrier or a broker, except a freight forwarder, that filed that tariff or schedule to which another carrier or broker is a party and, if the carrier is a water carrier, the notice specifies the classifications, rates, or practices involved, constitutes service of notice on all carriers or brokers that are parties to the joint tariff.

Service of notice under this subsection may be made by mail on that attorney or carrier at the address shown in the tariff.

49 USC 10330.

Agent
designation.

§ 10330. Service of process in court proceedings

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall designate an agent in the District of Columbia on whom service of process in an action before a district court may be made. Except as otherwise provided, process in an action before a district court shall be served on the designated agent of that carrier at the office or usual place of residence in the District of Columbia of that agent. If the carrier does not have a designated agent, service may be made by posting the notice in the office of the Secretary of the Commission.

(b) A motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, including a motor carrier or broker operating within the United States while providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, shall designate an agent in each State in which it operates by name and post office address on whom process issued by a court with subject matter jurisdiction may be served in an action brought against that carrier or broker. The designation shall be in writing and filed with the Commission and with the authority of each State in which the motor carrier or broker operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. If a designation under this subsection is not made, service may be made on any agent of the carrier or broker within that State.

(c) A designation under this section may be changed at any time in the same manner as originally made.

SUBCHAPTER III—JOINT BOARDS

49 USC 10341.

§ 10341. Jurisdiction

(a) The Interstate Commerce Commission may refer a matter related to motor carriers providing, or brokers for, transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, to a joint board established under section 10342 of

this title for action. When the operation of a motor carrier or broker involves not more than 3 States, the Commission shall refer the following matters to a joint board for action when an opportunity for a proceeding is required or when the Commission finds that it is desirable:

- (1) an application for a certificate, permit, or license.
- (2) a suspension, change, or revocation of a certificate, permit, or license.
- (3) an application for approval and authorization of a consolidation, merger, or acquisition of control or of an operating contract.
- (4) a complaint about a violation by a motor carrier or broker of a requirement established under section 10321(a), 10525, 11101(b), or 11142(b) of this title.
- (5) a complaint about rates of motor carriers or practices of brokers.

Post, pp. 1419, 1425.

(b) Notwithstanding subsection (a) of this section, if the Commission is prevented by legal proceedings from referring a matter to a joint board, the Commission may determine the matter under subchapter II of this chapter.

§ 10342. Establishment

49 USC 10342.

(a) The Interstate Commerce Commission may establish and abolish joint boards as necessary to carry out section 10341 of this title. Except as provided in this section, a joint board is composed of a member from each State in which transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title is, or is proposed to be, provided. The Commission may appoint an individual nominated under subsection (b) of this section as a member of a joint board.

Membership.

(b) The member of a joint board from a State shall be nominated by the State authority having jurisdiction to regulate intrastate transportation by motor vehicle on the highways of that State. If there is no such authority in that State or if that authority does not nominate a member when requested by the Commission, the chief executive officer of the State may nominate the member. If both that State authority and the chief executive officer of that State do not nominate a member when requested, the board is constituted without a member from that State if the Commission has appointed members for at least 2 other States to the board.

(c) When a matter required to be referred to a joint board involves the operation of a motor carrier in or through a place outside the United States, if only one State is involved or if only one State nominates an individual to be a member of the joint board, that State may nominate and the Commission may appoint not more than 3 members to the board.

(d) A substitution in the membership of a joint board may be made at any time in the same manner as an initial nomination and appointment under this section.

§ 10343. Powers

49 USC 10343.

(a) When conducting a proceeding involving a matter referred under section 10341 of this title, a joint board may make an initial decision under section 10322 of this title. Subchapter II of this chapter applies to an initial decision of a joint board. However, a joint board may report to the Interstate Commerce Commission its conclusions on evidence received without making an initial decision. When a joint board makes a report instead of an initial decision, the Commission

Report.

shall decide the matter. The Commission may consider the conclusions of the joint board in making its decision.

(b) A joint board may make an initial decision or report of its conclusions only by a majority vote. However, if only one member of the board participates in the proceeding, that member shall make the initial decision alone.

Waiver.

(c) When a member of a joint board does not participate in a proceeding referred to that board, after notice of the proceeding, the State from which that member was appointed waives its right to act in that proceeding. The waiver does not affect the duty or power of remaining members of the board to continue the proceeding and make an initial decision.

(d) In addition to decisions made under subsection (a) of this section, the Commission shall decide a matter referred to a joint board when—

(1) the authority of each State from which a member of the board may be appointed waives action on a matter referred to that board;

(2) a joint board does not act, or cannot agree, on a matter referred to it in 45 days after the matter is referred to it (or in another period authorized by the Commission); or

(3) a member is nominated for only one State, except as provided in section 10342(c) of this title.

49 USC 10344.

§ 10344. Administration

(a) Meetings and procedures of joint boards shall be conducted under regulations of the Interstate Commerce Commission. The Commission may designate an employee appointed under section 3105 of title 5 to advise and assist a joint board.

(b) When practicable and when directed by the Commission, a proceeding involving a matter referred to a joint board shall be held at a place in the United States that is convenient to the parties to the proceeding.

(c) The members of joint boards and employees designated to advise and assist them under subsection (a) of this section may administer oaths, subpoena witnesses and the production of records, and take depositions under section 10321 of this title related to matters referred to the boards.

Travel expenses.

(d) When carrying out this subtitle, members of joint boards shall receive an allowance for travel and subsistence expenses as the Commission shall provide.

Conflict of
interest,
prohibition.

(e) A member of a joint board may not have a pecuniary interest in, hold an official relation to, or own securities of, a carrier providing transportation by any mode.

Facilities.

(f) The Administrator of General Services shall assign space and facilities in the Interstate Commerce Commission building not required by the Commission for the use of the national organization of the State commissions and their representatives. The space and facilities shall be available for the use of joint boards and for members and representatives of those boards cooperating with the Commission or with another department, agency, or instrumentality of the United States Government. If suitable space is not available in the Interstate Commerce Commission building, the Administrator shall assign space in another building in convenient proximity to it.

SUBCHAPTER IV—RAIL SERVICES PLANNING OFFICE

§ 10361. Organization

49 USC 10361.

The Rail Services Planning Office is an office in the Interstate Commerce Commission.

§ 10362. Duties

49 USC 10362.

(a) In this section—

Definitions.

(1) “avoidable costs of providing transportation”, “reasonable management fee”, “reasonable return on the value”, and “revenue attributable to the rail properties” have the same meanings as they have when used in section 744 of title 45.

(2) “avoidable cost of providing rail freight transportation” has the same meaning as it has when used in section 10905(b) (2)

(A) of this title.

Post, p. 1405.**(b) The Rail Services Planning Office shall—**

Assistance.

(1) assist the Interstate Commerce Commission in studying and evaluating proposals, submitted to the Commission under subchapter III of chapter 113 of this title for a merger, consolidation, unification, or coordination project, joint use of tracks or other facilities, or acquisition or sale of assets involving a rail carrier subject to this subtitle;

Post, p. 1434.

(2) assist the Commission in developing, with respect to economic regulation of transportation, policies likely to result in a more competitive, energy-efficient, and coordinated transportation system using each mode of transportation to its maximum advantage to meet the transportation needs of the United States;

(3) assist States and local and regional transportation authorities in deciding whether to provide rail transportation continuation subsidies to continue in operation particular rail properties, by establishing criteria for determining whether particular rail properties are suitable for rail transportation continuation subsidies;

Criteria.

(4) conduct continuously an analysis of the national rail transportation needs, evaluate the policies, plans, and programs of the Commission on the basis of the analysis, and advise the Commission of the results of the evaluation;

Analysis and evaluation.

(5) maintain regulations that contain—

Regulations.

(A) standards for the computation of subsidies for rail passenger service (except passenger transportation compensation disputes subject to the jurisdiction of the Commission under section 562(a) of title 45) that are consistent with the compensation principles described in the final system plan established under the Regional Rail Reorganization Act of 1973 (87 Stat. 985), as amended, and which avoid cross-subsidization among commuter, intercity, and freight rail transportation; and

45 USC 701 note.

(B) standards for determining emergency commuter rail passenger transportation operating payments under section 1613 of this title;

49 USC 1613.

(6) maintain, and from time to time revise and republish after a proceeding under section 553 of title 5, standards for determining the revenue attributable to the rail properties, the avoidable costs of providing transportation, a reasonable return on the value, and a reasonable management fee;

(7) maintain regulations that—

Accounting
system.

(A) develop an accounting system permitting the collection and publication by the Consolidated Rail Corporation or by profitable rail carriers providing transportation over lines scheduled for abandonment, of information necessary for an accurate determination of the attributable revenues, avoidable costs, and operations of light density lines as operating and economic units; and

(B) determine the avoidable cost of providing rail freight transportation; and

(8) carry out other duties conferred on the Office by law.

(c) The criteria referred to in subsection (b) (3) of this section shall provide that rail properties are suitable for rail transportation continuation subsidies if the cost of the required subsidy to the taxpayers for the properties each year is less than—

(1) the cost of termination of rail transportation over the properties measured by increased fuel consumption and operational costs for alternative modes of transportation;

(2) the cost to the gross national product in terms of reduced output of goods and services;

(3) the cost of relocating or assisting, through unemployment, retraining, and welfare benefits, individuals and firms adversely affected if the rail transportation is terminated; and

(4) the cost to the environment measured by damage caused by increased pollution.

(d) The Office may at any time revise and republish the standards and regulations required by this section to incorporate changes made necessary by the accounting system developed under subsection (b) (7) of this section.

49 USC 10363.

§ 10363. Director

(a) The Director is the head of the Rail Services Planning Office and is responsible for administering and carrying out the duties of the Office.

(b) The Director is appointed for a term of 6 years by the Chairman of the Interstate Commerce Commission with the concurrence of at least 5 members of the Commission. The Director may be removed by the Commission only for cause.

(c) The Director is appointed without regard to those provisions of title 5 governing appointments in the competitive service and is paid without regard to chapter 51 and subchapter III of chapter 53 of title 5. However, the annual rate of basic pay of the Director may not exceed the rate for GS-18.

5 USC 5101 *et seq.*, 5331.

(d) The Director is subject to the direction of, and shall report to, a Commissioner or the Chairman, as designated by the Chairman.

49 USC 10364.

§ 10364. Powers

(a) With the concurrence of the Commissioner designated under section 10363(d) of this title or, if the Director of the Rail Services Planning Office and the Commissioner disagree (and that Commissioner is not the Chairman), with the concurrence of the Chairman of the Commission, the Director may enter into agreements or other transactions necessary to carry out the duties of the Office. The transactions may be entered into with any person, including a governmental authority, and without regard to section 5 of title 41.

(b) On written request of the Director for assistance, each department, agency, and instrumentality of the United States Government

shall consider the request, and may furnish assistance the Director considers necessary to carry out the duties of the Office. Assistance may be furnished on a reimbursable or nonreimbursable basis. Assistance includes the transfer of an officer or employee, with the consent, and without prejudice to the position and rating, of the officer or employee.

SUBCHAPTER V—OFFICE OF RAIL PUBLIC COUNSEL

§ 10381. Organization

49 USC 10381.

The Office of Rail Public Counsel is an independent office affiliated with the Interstate Commerce Commission.

§ 10382. Duties; standing

49 USC 10382.

(a) The Office of Rail Public Counsel—

(1) may petition the Interstate Commerce Commission to begin a proceeding on a matter within the jurisdiction of the Commission involving a rail carrier subject to this subtitle;

(2) may seek judicial review of Commission action on a matter involving a rail carrier providing transportation subject to this subtitle, to the extent, and on the same basis, that a person may seek judicial review;

(3) shall solicit, study, evaluate, and present before an informal or formal proceeding of the Commission, the views of those communities and users of rail transportation affected by a proceeding begun by, or pending before, the Commission, when the Director of the Office determines, for whatever reason (such as size or location), that any such community or user might not otherwise be represented adequately at the proceeding;

(4) shall—

(A) before the Commission and other departments, agencies, and instrumentalities of the United States Government when the policies and activities of any such department, agency, or instrumentality affect rail transportation subject to the jurisdiction of the Commission, evaluate and represent the public interest in safe, efficient, reliable, and economical rail transportation; and

(B) assist in constructively representing that public interest by other means;

(5) in carrying out its duties under clauses (1)–(4) of this subsection, shall assist the Commission in developing a public interest record in proceedings before the Commission; and

(6) shall carry out other duties conferred on the Office by law.

(b) The Office has standing as a party to any informal or formal proceeding that is pending or begun before the Commission involving a rail carrier providing transportation subject to this subtitle.

§ 10383. Director

49 USC 10383.

(a) The Director is the head of the Office of Rail Public Counsel and is responsible for administering and carrying out the duties of the Office.

(b) The Director is appointed by the President, by and with the advice and consent of the Senate, for a term of 4 years.

(c) The Director is paid without regard to chapter 51 and subchapter III of chapter 53 of title 5. However, the annual rate of basic pay of the Director may not exceed the rate for GS-18.

5 USC 5101 *et seq.*, 5331.
3 CFR 1978
Comp., p. 236
5 USC 5332 note.

49 USC 10384. § 10384. Office staff

The Director of the Office of Rail Public Counsel may—

- (1) appoint and fix the pay of employees of the Office; and
- (2) procure under section 3109 of title 5 the temporary or intermittent services of experts and consultants.

49 USC 10385. § 10385. Powers

(a) Without regard to section 5 of title 41, the Director of the Office of Rail Public Counsel may enter into agreements or other transactions necessary to carry out the duties of the Office.

(b) On request of the Director for information, each department, agency, and instrumentality of the United States Government may furnish the information requested.

49 USC 10386. § 10386. Reports

The Director of the Office of Rail Public Counsel shall submit each month to the Chairman of the Interstate Commerce Commission a report on the activities of the Office for the preceding month. In its annual report to Congress, the Commission shall include its evaluation and recommendations with respect to the activities, accomplishments, and shortcomings of the Office.

49 USC 10387. § 10387. Budget requests and estimates

The Office of Rail Public Counsel shall submit its budget requests and budget estimates concurrently to Congress and to the President.

49 USC 10388. § 10388. Authorizations of appropriations

Not more than \$1,000,000 may be appropriated to the Office of Rail Public Counsel for the fiscal year ending September 30, 1978, to carry out this subchapter.

CHAPTER 105—JURISDICTION

SUBCHAPTER I—RAIL, RAIL-WATER, EXPRESS, AND PIPELINE CARRIER TRANSPORTATION

Sec.

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10561. General jurisdiction.

10562. Exempt freight forwarder service.

SUBCHAPTER I—RAIL, RAIL-WATER, EXPRESS, AND
PIPELINE CARRIER TRANSPORTATION

§ 10501. General jurisdiction

49 USC 10501.

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation—

(1) by rail carrier, express carrier, sleeping car carrier, water common carrier, and pipeline carrier that is—

(A) only by railroad;

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment; or

(C) by pipeline or by pipeline and railroad or water when transporting a commodity other than water, gas, or oil; and

(2) to the extent the transportation is in the United States and is between a place in—

(A) a State and a place in another State;

(B) the District of Columbia and another place in the District of Columbia;

(C) a State and a place in a territory or possession of the United States;

(D) a territory or possession of the United States and a place in another such territory or possession;

(E) a territory or possession of the United States and another place in the same territory or possession;

(F) the United States and another place in the United States through a foreign country; or

(G) the United States and a place in a foreign country.

(b) The Commission does not have jurisdiction under subsection (a) of this section over—

(1) the transportation of passengers or property, or the receipt, delivery, storage, or handling of property, entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country except as otherwise provided in this subtitle; or

(2) transportation by a water common carrier when that transportation would be subject to this subchapter only because the water common carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, a switching, terminal, lighterage, car rental, trackage, handling, or other charge by a rail carrier for services in the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(c) This subtitle does not affect the power of a State, in exercising its police power, to require reasonable intrastate transportation by carriers providing transportation subject to the jurisdiction of the Commission under this subchapter unless the State requirement is inconsistent with an order of the Commission issued under this subtitle or is prohibited under this subtitle.

49 USC 10502. § 10502. Express carrier transportation

The Interstate Commerce Commission has jurisdiction under this subchapter, and not under subchapter II or III of this chapter, over transportation of an express carrier—

(1) by motor vehicle, to the extent the transportation was subject to the jurisdiction of the Commission on September 18, 1940, under part I of the Interstate Commerce Act (24 Stat. 379), as amended; and

(2) by water in providing express transportation.

49 USC prec. 1
note.

49 USC 10503. § 10503. Railroad and water transportation connections and rates

Jursidiction.

(a) When a rail carrier and a water common carrier may or do provide jointly, transportation, not entirely in one State from a place in the United States to another place in the United States, even if part of the transportation is outside the United States, the Interstate Commerce Commission has the following jurisdiction over that transportation:

(1) To establish a physical connection between the railroad lines of the rail carrier and the dock at which an interchange is to be made, the Commission may—

(A) require the rail carrier to make a suitable connection between its lines and tracks that have been constructed from the dock to the limits of the railroad right-of-way;

(B) subject to the same restrictions on findings of public convenience and necessity and other matters that are imposed on construction under sections 10901, 10902, and 10907 of this title, require the rail carrier or water common carrier, or both, to construct to the dock at least one track connecting with the lines of the rail carrier;

(C) determine and prescribe the conditions under which a connecting track is to be operated; and

(D) in the construction or operation of the track, determine the sum to be paid to, or by, either carrier.

(2) The Commission may—

(A) prescribe proportional rates, maximum proportional rates, minimum proportional rates, or maximum and minimum proportional rates, of a rail carrier to and from the ports to which the passengers or property is transported by the water common carrier; and

(B) determine the passengers, property, vessels, and on which conditions those rates apply.

“Proportional
rates.”

In this paragraph, “proportional rates” means those rates that differ from the corresponding local rates to and from a port and apply only to passengers or property brought to the port or carried from the port by a water common carrier.

Hearing.

(b) The Commission may act under this section only after a full hearing. An order entered as the result of an action may be conditioned on giving security for the payment of an amount of money or the discharge of an obligation that is required to be paid or discharged under that order.

49 USC 10504. § 10504. Exempt rail mass transportation

(a) In this section—

(1) “local public body”—

(A) has the same meaning given that term by section 1608(c) (2) of this title; and

“Local public
body.”

(B) includes a person or entity that contracts with the local public body to provide transportation services.

(2) "rail mass transportation" means transportation services described in section 1608(c) (5) of this title that are provided by rail.

"Rail mass transportation."
49 USC 1608.

(b) The Interstate Commerce Commission does not have jurisdiction under this subtitle over rail mass transportation provided by a local public body if—

Jursidiction.

(1) the Commission would have jurisdiction but for this section; and

(2) the fares of the local public body, or its authority to apply to the Commission for changes in those fares, is subject to the approval or disapproval of the chief executive officer of the State in which the transportation is provided.

§ 10505. Authority to exempt rail carrier transportation

49 USC 10505.

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service because of the limited scope of the transaction or service, when the Commission finds that the application of a provision of this subtitle—

(1) is not necessary to carry out the transportation policy of section 10101 of this title;

Ante, p. 1337.

(2) would be an unreasonable burden on a person, class of persons, or interstate and foreign commerce; and

(3) would serve little or no useful public purpose.

(b) The Commission may begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Commission may specify the period of time during which the exemption is effective.

(c) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary—

Revocation.

(1) to carry out the transportation policy of section 10101 of this title;

(2) to achieve effective regulation by the Commission; and

(3) to serve a useful public purpose.

(d) The Commission may act under this section only after an opportunity for a proceeding.

SUBCHAPTER II—MOTOR CARRIER TRANSPORTATION

§ 10521. General jurisdiction

49 USC 10521.

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation by motor carrier and the procurement of that transportation to the extent that passengers, property, or both, are transported by motor carrier—

(1) between a place in—

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

(b) This subtitle does not—

(1) affect the power of a State to regulate intrastate transportation provided by a motor carrier;

(2) authorize the Commission to prescribe or regulate a rate for intrastate transportation provided by a motor carrier;

(3) allow a motor carrier to provide intrastate transportation on the highways of a State; or

(4) except as provided in section 11504(b) of this title, affect the taxation power of a State over a motor carrier.

Post, p. 1446.

49 USC 10522.

§ 10522. Exempt transportation between Alaska and other States

To the extent that transportation by a motor carrier between a place in Alaska and a place in another State under section 10521 of this title is provided in a foreign country—

(1) the Interstate Commerce Commission does not have jurisdiction to impose a requirement over conduct of the motor carrier in the foreign country conflicting with a requirement of that country; but

(2) the motor carrier, as a condition of providing transportation in the United States, shall comply, with respect to all transportation provided between Alaska and the other State, with the requirements of this subtitle related to rates and practices applicable to the transportation.

49 USC 10523.

§ 10523. Exempt motor vehicle transportation in terminal areas

(a) (1) The Interstate Commerce Commission does not have jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

(A) is a transfer, collection, or delivery;

(B) is provided by—

(i) a rail carrier subject to the jurisdiction of the Commission under subchapter I of this chapter;

(ii) a water carrier subject to the jurisdiction of the Commission under subchapter III of this chapter; or

(iii) a freight forwarder subject to the jurisdiction of the Commission under subchapter IV of this chapter; and

(C) is incidental to transportation provided by the carrier or service provided by the freight forwarder that is subject to the jurisdiction of the Commission under any of those subchapters.

(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided by such a rail carrier, under subchapter III of this chapter when provided by such a water carrier, and under subchapter IV of this chapter when provided by such a freight forwarder.

(b) (1) Except to the extent provided in paragraph (2) of this subsection, the Commission does not have jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

(A) is a transfer, collection, or delivery; and

(B) is provided by a person as an agent or under other arrangement for—

(i) a rail carrier or express carrier subject to the jurisdiction of the Commission under subchapter I of this chapter;

(ii) a motor carrier subject to the jurisdiction of the Commission under this subchapter;

(iii) a water carrier subject to the jurisdiction of the Commission under subchapter III of this chapter; or

(iv) a freight forwarder subject to the jurisdiction of the Commission under subchapter IV of this chapter.

(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is considered transportation provided by the carrier or service provided by the freight forwarder for whom the transportation was provided and is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided for such a rail carrier or express carrier, under this subchapter when provided for such a motor carrier, under subchapter III of this chapter when provided for such a water carrier, and under subchapter IV of this chapter when provided for such a freight forwarder.

§ 10524. Transportation furthering a primary business

49 USC 10524.

The Interstate Commerce Commission does not have jurisdiction under this subchapter over the transportation of property by motor vehicle when—

(1) the property is transported by a person engaged in a business other than transportation; and

(2) the transportation is within the scope of, and furthers a primary business (other than transportation) of the person.

§ 10525. Exempt motor carrier transportation entirely in one State

49 USC 10525.

(a) The Interstate Commerce Commission shall exempt transportation of a motor carrier subject to the jurisdiction of the Commission under this subchapter from compliance with this subtitle when—

(1) the motor carrier provides transportation entirely in one State; and

(2) the Commission finds that the nature or quantity of transportation provided by the motor carrier does not substantially affect or impair uniform regulation by the Commission of motor carrier transportation in carrying out the transportation policy of section 10101 of this title.

(b) The Commission may begin a proceeding under this section on its own initiative or on application of a motor carrier, a State authority having jurisdiction to regulate intrastate transportation by motor vehicle on the highways of that State, or an interested party. An application must be under oath and must contain information required by Commission regulation. The Commission may exempt the transportation by motor carrier or class of motor carriers. When an exemption is granted, the Commission shall issue a certificate of exemption describing the conditions required by the public interest under which the certificate is issued.

Ante, p. 1337.
Proceedings.

Exemption
certificate.

(c) When an application for exemption is accompanied by a certificate of the authority of the State in which the applicant provides transportation stating the finding of the State authority that the applicant is entitled to a certificate of exemption under this section, the exemption is effective on the 60th day after the application is filed with the Commission unless the Commission denies the application before

that date. If not denied before that date, the exemption remains effective until the Commission thereafter denies or revokes it.

Revocation.

(d) The Commission may revoke any part of an exemption granted under this section when it finds that the nature or quantity of the transportation by the motor carrier or class of motor carriers is, or is likely substantially to affect or impair uniform regulation by the Commission of motor carrier transportation in carrying out the transportation policy of section 10101 of this title. If the exemption is revoked, the Commission shall restore without further proceedings the authority any such motor carrier had to provide transportation subject to the jurisdiction of the Commission under this subchapter at the time the exemption was effective.

Ante, p. 1337.

(e) State regulation of the operations of a motor carrier covered by an exemption under this section is not a burden on interstate or foreign commerce.

49 USC 10526.

§ 10526. Miscellaneous motor carrier transportation exemptions

(a) The Interstate Commerce Commission does not have jurisdiction under this subchapter over—

(1) a motor vehicle transporting only school children and teachers to or from school;

(2) a motor vehicle providing taxicab service and having a capacity of not more than 6 passengers and is not operated on a regular route or between specified places;

(3) a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a common carrier;

(4) a motor vehicle controlled and operated by a farmer and transporting—

(A) the farmer's agricultural or horticultural commodities and products; or

(B) supplies to the farm of the farmer;

(5) a motor vehicle controlled and operated by a cooperative association (as defined by section 1141j(a) of title 12) or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides transportation for compensation between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State—

(A) for a nonmember that is not a farmer, cooperative association, federation, or the United States Government, the transportation (except for transportation otherwise exempt under this subchapter)—

(i) shall be limited to transportation incidental to the primary transportation operation of the cooperative association or federation and necessary for its effective performance;

(ii) may not exceed in each fiscal year 15 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and

(iii) shall be provided only after the cooperative association or federation notifies the Commission of its intent to provide the transportation; and

(B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transporta-

tion between those places for the cooperative association or federation and its members during that fiscal year;

(6) a motor vehicle carrying, for compensation, only property and that property consists of —

(A) ordinary livestock;

(B) agricultural or horticultural commodities (other than manufactured products thereof);

(C) commodities listed as exempt in the Commodity List incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, other than frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, or wool imported from a foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted); and

(D) cooked or uncooked fish, whether breaded or not, or frozen or fresh shellfish, other than fish or shellfish that have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products;

(7) a motor vehicle used only to distribute newspapers;

(8) transportation by motor vehicle incidental to transportation by aircraft; or

(9) the operation of a motor vehicle in a national park or national monument.

(b) Except to the extent the Commission finds it necessary to exercise jurisdiction to carry out the transportation policy of section 10101 of this title, the Commission does not have jurisdiction under this subchapter over—

Ante, p. 1337.

(1) transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to, and commercially a part of, the municipality or municipalities, except—

(A) when the transportation is under common control, management, or arrangement for a continuous carriage or shipment to or from a place outside the municipality, municipalities, or zone; or

(B) that in transporting passengers over a route between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State, the transportation is exempt from the jurisdiction of the Commission only if the motor carrier operating the motor vehicle also is lawfully providing intrastate transportation of passengers over the entire route under the laws of each State through which the route runs;

(2) transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business, except when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or certificate or permit issued, under this subtitle; or

(3) the emergency towing of an accidentally wrecked or disabled motor vehicle.

SUBCHAPTER III—WATER CARRIER TRANSPORTATION

§ 10541. General jurisdiction

49 USC 10541.

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation insofar as water carriers are concerned—

(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) by water carrier and rail carrier or motor carrier from a place in a State to a place in another State, except that if part of the transportation is outside the United States, the Commission only has jurisdiction over that part of the transportation provided—

(A) by rail carrier or motor carrier that is in the United States; and

(B) by water carrier that is from a place in the United States to another place in the United States; and

(3) by water carrier or by water carrier and rail carrier or motor carrier between a place in the United States and a place outside the United States, to the extent that—

(A) when the transportation is by rail carrier or motor carrier, the transportation is provided in the United States;

(B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and

(C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.

(b) If transportation by a carrier would be subject to the jurisdiction of the Commission under both subsection (a) of this section and subchapter I of this chapter, then that transportation is subject to the jurisdiction of the Commission under subsection (a) of this section. However, that transportation is also subject to the jurisdiction of the Commission under subchapter I of this chapter to the extent that this subtitle imposes requirements on transportation by carriers subject to the jurisdiction of the Commission under subchapter I that are not imposed on transportation by carriers subject to the jurisdiction of the Commission under subsection (a) of this section.

(c) This subtitle does not—

(1) affect the power of a State to regulate intrastate transportation provided by a water carrier; or

(2) authorize the Commission to prescribe or regulate a rate for intrastate transportation by a water carrier.

49 USC 10542.

§ 10542. Exempt bulk transportation

(a) (1) The Interstate Commerce Commission does not have jurisdiction under this subchapter over transportation by a water carrier of commodities in bulk that, under an existing custom of the trade in the handling and transportation of commodities in bulk as of June 1, 1939—

(A) are loaded and carried without wrappers or containers; and

(B) are received and delivered by the carrier without transportation mark or count.

(2) This subsection does not apply to transportation subject to chapter 23A of title 46 on September 18, 1940.

(b) The Commission does not have jurisdiction under this subchapter over transportation by a water contract carrier of commodities in bulk in a non-oceangoing vessel on a normal voyage during which—

(1) the cargo space of the vessel is used for carrying not more than 3 commodities in bulk; and

(2) the vessel passes in or through waters that are international for navigational purposes by a treaty to which the United States is a party.

(c) The Commission does not have jurisdiction under this subchapter over transportation by water carrier of liquid cargoes in bulk in tank vessels—

(1) designed exclusively for transporting such a cargo; and

(2) certified under regulations of the Secretary of Transportation under section 391a of title 46.

§ 10543. Exempt incidental water transportation

46 USC 843 *et seq.*
49 USC 10543.

(a) (1) The Interstate Commerce Commission does not have jurisdiction under this subchapter when the transportation—

(A) (i) is provided in a terminal area and is a transfer, collection, or delivery; or

(ii) is flotage, car ferrying, lighterage, or towage;

(B) is provided by—

(i) a rail carrier subject to the jurisdiction of the Commission under subchapter I of this chapter; or

(ii) a motor carrier subject to the jurisdiction of the Commission under subchapter II of this chapter; and

(C) is incidental to transportation provided by the carrier subject to the jurisdiction of the Commission under either of those subchapters.

(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided by such a rail carrier and under subchapter II of this chapter when provided by such a motor carrier.

(b) (1) Except to the extent provided in paragraph (2) of this subsection, the Commission does not have jurisdiction under this subchapter over transportation by water when the transportation—

(A) (i) is provided in a terminal area and is a transfer, collection, or delivery; or

(ii) is flotage, car ferrying, lighterage, or towage; and

(B) is provided by a person as an agent or under other arrangement for—

(i) a rail carrier or express carrier subject to the jurisdiction of the Commission under subchapter I of this chapter;

(ii) a motor carrier subject to the jurisdiction of the Commission under subchapter II of this chapter; or

(iii) a water carrier subject to the jurisdiction of the Commission under this subchapter.

(2) Transportation exempt from the jurisdiction of the Commission under paragraph (1) of this subsection is considered transportation provided by the carrier for whom the transportation was provided and is subject to the jurisdiction of the Commission under subchapter I of this chapter when provided for such a rail carrier

or express carrier, under subchapter II of this chapter when provided for such a motor carrier, and under this subchapter when provided for such a water carrier.

49 USC 10544.

§ 10544. Miscellaneous water carrier transportation exemptions

Ante, p. 1337.

(a) Except to the extent the Interstate Commerce Commission finds it necessary to exercise jurisdiction to carry out the transportation policy of section 10101 of this title, the Commission does not have jurisdiction under this subchapter over transportation by water carrier when the transportation is provided—

(1) entirely in one harbor or between places in contiguous harbors, other than transportation under common control, management, or arrangement for a continuous carriage or shipment to or from a place outside the limits of the harbor or the contiguous harbors;

(2) by a vessel of not more than 100 tons carrying capacity or 100 indicated horsepower;

(3) by a vessel carrying only passengers and equipped to carry not more than 16 passengers;

(4) by a ferry;

(5) by a water carrier transporting equipment of contractors used, or to be used, in construction or repair for the water carrier; or

(6) to carry out salvage operations.

Proceeding.

(b) The Commission may exempt from its jurisdiction under this subchapter the transportation of passengers between places in the United States through a foreign port when the Commission finds its jurisdiction is not necessary to carry out the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on its own initiative or on application of an interested party.

Conditions.
Proceeding.

(c) The Commission shall exempt from its jurisdiction under this subchapter the transportation of commodities by water contract carrier when the Commission finds that the transportation is not actually and substantially competitive with transportation provided by a carrier subject to the jurisdiction of the Commission under subchapter I or II of this chapter because of the inherent nature of the commodities transported, their requirement of special equipment, or their shipment in bulk. The Commission may prescribe conditions applicable to an exemption under this subsection. The Commission may begin a proceeding under this subsection on application of a water contract carrier.

(d) (1) The Commission does not have jurisdiction under this subtitle over transportation by a water common carrier provided between the 48 contiguous States and Alaska if, before January 3, 1959—

(A) the carrier provided that transportation, was also a motor common carrier, and has continued to provide the transportation since before that date; and

(B) the transportation was subject to chapters 23 and 23A of title 46.

46 USC 801 *et seq.*, 843 *et seq.*

(2) The transportation remains subject to the jurisdiction of the Federal Maritime Commission.

(e) The Commission shall exempt the transportation of property on a vessel furnished by a water contract carrier to a person not a carrier providing transportation or service subject to the jurisdiction of the Commission under this subtitle when the person uses the vessel to trans-

port its own property and the Commission finds its jurisdiction is not necessary to carry out the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this section on its own initiative or on application of an interested party. The Commission may exempt the transportation by person or class of persons. The Commission shall specify the period of time during which the exemption is effective. The Commission may revoke the exemption when it finds that its jurisdiction over the transportation of the property is necessary to carry out the transportation policy of section 10101. The Commission may deny or revoke an exemption only after an opportunity for a proceeding.

Ante, p. 1337.
Proceeding.

(f) (1) The Commission shall exempt the transportation of property by a water carrier under this subchapter when the Commission finds that the carrier is transporting only the property of a person owning substantially all of the voting stock of the carrier. When an exemption is granted, the Commission shall issue a certificate of exemption. The Commission may begin a proceeding under this subsection on its own initiative or on application of an interested party.

Exemption
certificate.
Proceeding.

(2) The Commission may revoke an exemption granted under this subsection when it finds the water carrier is no longer entitled to the exemption. If the exemption is revoked, the Commission shall restore without further proceedings the authority the water carrier had to provide transportation subject to the jurisdiction of the Commission under this subchapter at the time the exemption became effective.

Revocation.

SUBCHAPTER IV—FREIGHT FORWARDER SERVICE

§ 10561. General jurisdiction

49 USC 10561.

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over service that a freight forwarder—

- (1) undertakes to provide; or
- (2) is authorized or required under this subtitle to provide; to the extent transportation is provided in the United States and is between—

(A) a place in a State and a place in another State, even if part of the transportation is outside the United States;

(B) a place in a State and another place in the same State through a place outside the State; or

(C) a place in the United States and a place outside the United States.

(b) The Commission does not have jurisdiction under subsection (a) of this section over service undertaken by a freight forwarder using transportation—

- (1) of an air carrier subject to chapter 20 of this title; or
- (2) by motor vehicle exempt under section 10526(a)(8) of this title.

49 USC 1301 *et seq.*

§ 10562. Exempt freight forwarder service

49 USC 10562.

The Interstate Commerce Commission does not have jurisdiction under this subchapter over—

- (1) service provided by, or under the direction of, a cooperative association (as defined by section 1141j(a) of title 12) or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association;
- (2) service subject to the jurisdiction of the Commission and provided with respect to only one of the following categories:

- (A) ordinary livestock;
 - (B) fish (including shellfish);
 - (C) agricultural or horticultural commodities (other than manufactured products thereof); or
 - (D) used household goods;
- (3) the service of a shipper or a group of shippers in consolidating or distributing freight on a nonprofit basis, for the shipper or members of the group to secure carload, truckload, or other volume rates; or
- (4) the service of an agent of a shipper in consolidating or distributing pool cars when the service is provided for the shipper only in a terminal area in which the service is performed.

CHAPTER 107—RATES, TARIFFS, AND VALUATIONS

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SUBCHAPTER I—GENERAL AUTHORITY

§ 10701. Standards for rates, classifications, through routes, rules, and practices 49 USC 10701.

(a) A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title must be reasonable. A through route established by such a carrier must be reasonable. Divisions of joint rates by those carriers must be made without unreasonable discrimination against a participating carrier and must be reasonable.

(b) (1) A rate for transportation provided by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that contributes, or would contribute, to the going concern value of that carrier does not violate subsection (a) of this section because it is below a reasonable minimum rate for the service rendered or to be rendered. This subsection does not prohibit increasing a rate to a level that contributes to the going concern value of a rail carrier if the increase is otherwise reasonable. The increased rate is presumed reasonable if it does not exceed the incremental costs of rendering the transportation to which the increase applies.

Rate increases.

(2) (A) A rate for transportation by a rail carrier that equals or exceeds the variable costs of providing the transportation is presumed to contribute to the going concern value of the rail carrier proposing the rate. However, the presumption may be rebutted by clear and convincing evidence.

(B) Variable and incremental costs shall be determined under formulas prescribed by the Commission. However, when making a determination of variable costs, the Commission shall, on application of the rail carrier proposing the rate, determine only the costs of that carrier and only those costs of the specific service in question unless the specific information is not available. The Commission may not include in variable costs an expense that does not vary directly with the level of transportation provided under the proposed rate.

(c) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title may not discriminate in its rates against a connecting line of another carrier providing transportation subject to the juris-

Nondiscrimination.

diction of the Commission under either of those subchapters or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

(d) In a proceeding to determine whether a rate for transportation or service provided by a common carrier subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 of this title complies with subsection (a) of this section, the good will, earning power, or certificate or permit under which that carrier is operating may not be considered or admitted as evidence of the value of the property of that carrier. When the carrier receives a certificate or permit under chapter 109 of this title, it is considered to have agreed to this subsection for itself and for all transferees of that certificate or permit.

Post, p. 1402.

49 USC 10702.

§ 10702. Authority for carriers to establish rates, classifications, rules, and practices

(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall establish—

(1) rates, including divisions of joint rates, and classifications for transportation and service it may provide under this subtitle; and

(2) rules and practices on matters related to that transportation or service, including rules and practices on—

(A) issuing tickets, receipts, bills of lading, and manifests;

(B) carrying of baggage;

(C) the manner and method of presenting, marking, packing, and delivering property for transportation; and

(D) facilities for transportation.

Filing.

(b) A contract carrier providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title shall establish, and file with the Commission, actual and minimum rates for the transportation it may provide under this subtitle and rules and practices related to those rates. However, this subsection does not require a motor contract carrier to maintain the same rates and rules related to those rates for the same transportation provided to shippers served by it. The Commission may grant relief from this subsection when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers or on its own initiative for a water contract carrier or group of water contract carriers.

Relief.

Ante, p. 1337.
Proceeding.

49 USC 10703.

§ 10703. Authority for carriers to establish through routes

(a) A carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall establish through routes as follows:

(1) Rail, express, sleeping car, and pipeline carriers shall establish through routes with each other and shall establish rates and classifications applicable to those routes.

(2) Rail and water common carriers shall establish through routes with each other and shall establish rates and classifications applicable to those routes.

(3) A motor common carrier of passengers shall establish through routes with other carriers of the same type and shall establish individual and joint rates applicable to them.

(4) (A) A motor common carrier of property may establish through routes and joint rates and classifications applicable to them with other carriers of the same type, with rail and express carriers, and with water common carriers, including those referred to in subparagraph (D) of this paragraph.

(B) A motor common carrier of passengers may establish through routes and joint rates applicable to them with rail carriers or water common carriers, including those referred to in subparagraph (D) of this paragraph, or both.

(C) Water common carriers shall establish through routes with each other and shall establish rates and classifications applicable to those routes and may establish—

(i) through routes and rates and classifications applicable to them with motor common carriers; and

(ii) through routes and joint rates and classifications applicable to them with water common carriers referred to in subparagraph (D) (ii) of this paragraph.

(D) A through route or joint rate or classification authorized to be established with a carrier referred to in this subparagraph may be established with a water common carrier providing transportation subject to—

(i) the jurisdiction of the Commission under subchapter III of chapter 105 of this title; or

(ii) section 801 or sections 843-848 of title 46 (including persons holding themselves out to transport goods by water but not owning or operating vessels) and providing transportation of property between Alaska or Hawaii and the other 48 States.

A through route and a rate, classification, rule, or practice related to a through route with a water common carrier referred to in this subparagraph is subject to the provisions of this subtitle governing the type of carrier establishing the rate, classification, rule, or practice.

(b) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title that establishes a through route with another carrier under this section shall establish rules for its operation and provide—

(1) reasonable facilities for operating the through route; and

(2) reasonable compensation to persons entitled to compensation for services related to the through route.

Operating rules.

§ 10704. Authority and criteria: rates, classifications, rules, and practices prescribed by Interstate Commerce Commission

49 USC 10704.

(a) (1) When the Interstate Commerce Commission, after a full hearing, decides that a rate charged or collected by a carrier for transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or that a classification, rule, or practice of that carrier, does or will violate this subtitle, the Commission may prescribe the rate (including a maximum or minimum rate, or both), classification, rule, or practice to be followed. The Commission may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Commission.

Violations.

Revenue levels,
standards and
procedures.

(2) The Commission shall maintain standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under that subchapter that are adequate, under honest, economical, and efficient management, to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business. The Commission shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. However, a rate, classification, rule, or practice of a rail carrier may be maintained at a particular level to protect the traffic of another carrier or mode of transportation only if the Commission finds that the rate or classification, or rule or practice related to it, reduces or would reduce the going concern value of the carrier charging the rate. Revenue levels established under this paragraph should—

(A) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation; and

(B) attract and retain capital in amounts adequate to provide a sound transportation system in the United States.

(b)(1) When the Commission decides that a rate charged or collected by—

(A) a motor common carrier for providing transportation subject to its jurisdiction under subchapter II of chapter 105 of this title by itself, with another motor common carrier, with a rail, express, or water common carrier, or any of them;

(B) a water common carrier for providing transportation subject to its jurisdiction under subchapter III of chapter 105 of this title; or

(C) a freight forwarder for providing service subject to its jurisdiction under subchapter IV of chapter 105 of this title; or that a classification, rule, or practice of that carrier, does or will violate this chapter, the Commission shall prescribe the rate (including a maximum or minimum rate, or both), classification, rule, or practice to be followed.

(2) When prescribing a rate, classification, rule, or practice for transportation or service by common carriers other than by rail carrier, the Commission shall consider, among other factors, the following:

(A) the effect of the prescribed rate, classification, rule, or practice on the movement of traffic by that carrier; and

(B) the need for revenues that are sufficient, under honest, economical, and efficient management, to let the carrier provide that transportation or service.

(3) If the carrier is a motor or water common carrier or a freight forwarder, the Commission shall also consider the need, in the public interest, of adequate and efficient transportation or service by that carrier at the lowest cost consistent with providing that transportation or service.

(4) If the carrier is a motor common carrier or a freight forwarder, the Commission shall also consider the inherent advantages of transportation by motor common carrier or the inherent nature of freight forwarding, respectively.

(c)(1) When the Commission finds that a minimum rate of a contract carrier for transportation subject to the jurisdiction of the Com-

mission under subchapter II or III of chapter 105 of this title, or a rule or practice related to the rate or the value of the service under it, violates this chapter or the transportation policy of section 10101 of this title, the Commission may prescribe the minimum rate, rule, or practice for the carrier that is desirable in the public interest and will promote that policy. In prescribing the rate, the Commission may not give a motor or water contract carrier an advantage or preference in competition with a motor or water common carrier, respectively, if an advantage or preference is unreasonable or inconsistent with the public interest and the transportation policy of section 10101 of this title.

Ante, p. 1337.

(2) When prescribing a minimum rate, or rule or practice related to a rate, for a contract carrier, the Commission shall consider—

(A) the cost of the transportation provided by the carrier; and

(B) the effect of a prescribed minimum rate, or rule or practice, on the movement of traffic by that carrier.

(d) In a proceeding involving competition between carriers of different modes of transportation subject to this subtitle, except rail carriers, the Commission, in determining whether a rate is less than a reasonable minimum rate, shall consider the facts and circumstances involved in moving the traffic by the mode of carrier to which the rate is applicable. Subject to the transportation policy of section 10101 of this title, rates of a carrier may not be maintained at a particular level to protect the traffic of another mode of transportation.

Proceedings.

(e) In a proceeding involving a proposed increase or decrease in rail carrier rates, the Commission shall specifically consider allegations that the increase or decrease would (1) change the rate relationships between commodities, ports, places, regions, areas, or other particular descriptions of traffic (without regard to previous Commission consideration or approval of those relationships), and (2) have a significant adverse effect on the competitive position of shippers or consignees served by the rail carrier proposing the increase or decrease. The Commission shall investigate to determine whether the change or effect violates this subtitle when it finds that those allegations are substantially supported on the record. The investigation may be made either before or after the proposed increase or decrease becomes effective and either in that proceeding or in another proceeding.

Investigation.

(f) The Commission may begin a proceeding under this section on its own initiative or on complaint. A complaint under subsection (a) of this section must be made under section 11701 of this title, but the proceeding may also be in extension of a complaint pending before the Commission. A complaint under subsection (c) of this section must contain a full statement of the facts and the reasons for the complaint and must be made under oath.

Post, p. 1449.

§ 10705. Authority: through routes, joint classifications, rates, and divisions prescribed by Interstate Commerce Commission

49 USC 10705.

(a) (1) The Interstate Commerce Commission may, and shall when it considers it desirable in the public interest, prescribe through routes, joint classifications, joint rates (including maximum or minimum rates or both), the division of joint rates, and the conditions under which those routes must be operated, for a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II (except a motor common carrier of property),

Differential.

or III of chapter 105 of this title. When one of the carriers on a through route is a water carrier, the Commission shall prescribe a differential between an all-rail rate and a joint rate related to the water carrier if the differential is justified.

(2) The Commission may require a rail carrier to include in a through route substantially less than the entire length of its railroad and any intermediate railroad operated with it under common management or control if that intermediate railroad lies between the terminals of the through route only when—

Post, p. 1419.

(A) required under section 10741-10744 or 11103 of this title;

(B) one of the carriers is a water carrier;

(C) inclusion of those lines would make the through route unreasonably long when compared with a practicable alternative through route that could be established; or

(D) the Commission decides that the proposed through route is needed to provide adequate, and more efficient or economic, transportation.

The Commission shall give reasonable preference, subject to this subsection, to the rail carrier originating the traffic when prescribing through routes.

Prohibition.

(3) The Commission may not prescribe—

(A) a through route, classification, practice, or rate between a street electric passenger railway not engaged in the general business of transporting freight in addition to its passenger and express business and (i) a rail carrier of a different character, or (ii) a water common carrier; or

(B) a through route or joint rate applicable to it to assist a participating carrier to meet its financial needs.

(b) The Commission shall prescribe the division of joint rates to be received by a carrier providing transportation subject to its jurisdiction under chapter 105 of this subtitle when it decides that a division of joint rates established by the participating carriers under section 10703 of this title, or under a decision of the Commission under subsection (a) of this section, does or will violate section 10701 of this title. When prescribing the division of joint rates of a rail or water carrier under this subsection, the Commission shall consider—

(1) the efficiency with which the carriers concerned are operated;

(2) the amount of revenue required by the carriers to pay their operating expenses and taxes and receive a fair return on the property held and used for transportation;

(3) the importance of the transportation to the public;

(4) whether a particular participating carrier is an originating, intermediate, or delivering line; and

(5) other circumstances that ordinarily, without regard to the mileage traveled, entitle one carrier to a different proportion of a rate than another carrier.

(c) If a division of a joint rate prescribed under a decision of the Commission is later found to violate section 10701 of this title, the Commission may decide what division would have been reasonable and order adjustment to be made retroactive to the date the complaint was filed, the date the order for an investigation was made, or a later date that the Commission decides is justified. The Commission may make a decision under this paragraph effective as part of its original decision.

(d) When the Commission suspends, for investigation, a rail or water common carrier tariff that would cancel a through route, joint rate, or classification without the consent of all carriers that are parties to it or without authorization of the Commission, the carrier proposing the cancellation has the burden of proving that cancellation is consistent with the public interest without regard to subsection (a) (2) of this section. In determining whether a cancellation involving a rail carrier is consistent with the public interest, the Commission shall, to the extent applicable—

(1) compare the distance traveled and the average transportation time and expense required using (A) the through route, and (B) alternative routes, between the places served by the through route;

(2) consider any reduction in energy consumption that may result from cancellation; and

(3) consider the overall impact of cancellation on the shippers and carriers that are affected by it.

(e) (1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint and may take action only after a full hearing. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by rail carrier within one year after the complaint is filed if the proceeding is brought on complaint or within 2 years after the commencement of a proceeding on the initiative of the Commission and must take final action by the 270th day after completion of the evidentiary proceedings. The Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but when the Commission cannot meet those time limits, it must report its reasons to Congress.

Hearing and proceeding.

Extension, report to Congress.

(2) When a carrier begins a proceeding to adjust the division of joint rates for transportation by a rail carrier under this section by filing a complaint with the Commission, the carrier must also file all of the evidence in support of its position with the complaint and, during the course of the proceeding may only file rebuttal or reply evidence unless otherwise ordered by the Commission.

(3) When the Commission receives a notice of intent to begin a proceeding to adjust the division of joint rates for transportation by a rail carrier under this section, the Commission shall allow the party filing the notice the same right to discovery that a party would have on filing a complaint under this section.

Discovery.

(f) When there is a shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may prescribe temporary through routes that are desirable in the public interest on its own initiative or on application without regard to subsection (e) of this section, subchapter II of chapter 103 of this title, and subchapter II of chapter 5 of title 5.

Emergency.

Ante, p. 1345.
5 USC 551.

§ 10706. Rate agreements: exemption from antitrust laws

19 USC 10706.
Definitions.

(a) (1) In this subsection—

(A) “affiliate” means a person controlling, controlled by, or under common control or ownership with another person and “ownership” refers to equity holdings in a business entity of at least 5 percent.

(B) “single-line rate” refers to a rate or allowance proposed by a single rail carrier that is applicable only over its line and for which the transportation (exclusive of terminal services by

switching, drayage or other terminal carriers or agencies) can be provided by that carrier.

Approval.

(2) (A) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title that is a party to an agreement of at least 2 rail carriers or an agreement with a class of carriers referred to in subsection (c) (1) (B)-(E) of this section, that relates to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them, shall apply to the Commission for approval of that agreement under this subsection. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of its approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, and the Sherman Act (15 U.S.C. 1, et seq.), the Clayton Act (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a) do not apply to parties and other persons with respect to making or carrying out the agreement. However, the Commission may not approve or continue approval of an agreement when the conditions required by it are not met or if it does not receive a verified statement under subparagraph (B) of this paragraph.

Verified statement, filing.

(B) The Commission may approve an agreement under subparagraph (A) of this paragraph only when the carriers applying for approval file a verified statement with the Commission. Each statement must specify for each rail carrier that is a party to the agreement—

- (i) the name of the carrier;
- (ii) the mailing address and telephone number of its headquarter's office; and
- (iii) the names of each of its affiliates and the names, addresses, and affiliates of each of its officers and directors and of each person, together with an affiliate, owning or controlling any debt, equity, or security interest in it having a value of at least \$1,000,000.

Final disposition.

(3) (A) An organization established or continued under an agreement approved under this subsection shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. Such an organization may not—

- (i) permit a rail carrier to participate in agreements related to, or to vote on single-line rates proposed by another rail carrier, or on rates related to a particular interline movement unless that rail carrier can practicably participate in that movement; or
- (ii) permit, provide for, or establish a procedure for joint consideration or joint action to protest or seek the suspension of a rate or classification filed by a rail carrier under section 10707 of this title when that rate or classification is established by independent action.

(B) Subparagraph (A) (i) and (ii) of this paragraph does not apply to—

(i) general rate increases or decreases if the agreement gives shippers, under specified procedures, at least 15 days' notice of the proposal and an opportunity to present comments on it before a tariff containing the increases or decreases is filed with the Commission; or

Notice and
comments.

(ii) broad tariff changes that are of at least substantially general application throughout the area where the changes will apply.

(C) In any proceeding in which a party alleges that a rail carrier voted or agreed on a rate or allowance in violation of this subsection, that party has the burden of showing that the vote or agreement occurred. A showing of parallel behavior does not satisfy that burden by itself.

(b) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title (except a rail carrier) that is a party to an agreement of at least 2 carriers related to rates (including charges between carriers and compensation paid or received for the use of facilities and equipment), allowances, classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them, may apply to the Commission for approval of that agreement under this subsection. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, and the antitrust laws, as defined in section 12 of title 15, do not apply to parties and other persons with respect to making or carrying out the agreement.

Ante, p. 1358.

Ante, p. 1337.

(c) (1) In this subsection, carriers are classified as follows:

Carrier
classification.

(A) Rail, express, and sleeping car carriers are a class.

(B) Pipeline carriers are a class.

(C) Motor carriers are a class.

(D) Water carriers are a class.

(E) Freight forwarders are a class.

(2) The Commission may not approve an agreement under this section.

Unapprovable
agreements.

(A) between or among carriers of different classes unless, in addition to the finding required under subsection (a) or (b) of this section, the Commission finds that the agreement is limited to matters related to transportation under joint rates or over through routes;

(B) related to a pooling, division, or other matter to which subchapter III of chapter 113 of this title applies; or

Post, p. 1434.

(C) establishing a procedure for determination of a matter through joint consideration unless the Commission finds that each party to the agreement has the absolute right under it to take independent action before or after a determination is made under that procedure.

(d) The Commission may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Commission, or its delegate, may inspect a record maintained under this section.

Records
maintenance.

Review. (e) The Commission may review an agreement approved under subsection (a) or (b) of this section and shall change the conditions of approval or terminate it when necessary to comply with (1) the public interest and subsection (a), or (2) subsection (b). The Commission shall postpone the effective date of a change of an agreement under this subsection for whatever period it determines to be reasonably necessary to avoid unreasonable hardship.

Postponement.

Proceeding. (f) The Commission may begin a proceeding under this section on its own initiative or on application. Action of the Commission under this section (1) approving an agreement, (2) denying, ending, or changing approval, (3) prescribing the conditions on which approval is granted, or (4) changing those conditions, has effect only as related to application of the antitrust laws referred to in subsection (a) or (b) of this section.

Review. (g) The Commission shall review each agreement approved under subsection (a) of this section periodically, but at least once every 3 years (1) to determine whether the agreement or an organization established or continued under one of those agreements still complies with the requirements of that subsection and the public interest, and (2) to evaluate the success and effect of that agreement or organization on the consuming public and the national rail freight transportation system. If the Commission finds that an agreement or organization does not conform to the requirements of that subsection, it shall end or suspend its approval. The Commission shall report to the President and Congress the results of the review as a part of its annual report under section 10311 of this title.

Report to President and Congress.
Ante, p. 1345.
Assessment report by FTC, publication.

(h) (1) The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall prepare periodically an assessment of, and shall report to the Commission on—

(A) possible anticompetitive features of—

- (i) agreements approved or submitted for approval under subsection (a) of this section; and
- (ii) an organization operating under those agreements; and

(B) possible ways to alleviate or end an anticompetitive feature, effect, or aspect in a manner that will further the goals of this subtitle and of the transportation policy of section 10101 of this title.

(2) Reports received by the Commission under this subsection shall be published and made available to the public under section 552(a) of title 5.

49 USC 10707.

§ 10707. Investigation and suspension of new rail carrier rates, classifications, rules, and practices

(a) When a new individual or joint rate or individual or joint classification, rule, or practice related to a rate is filed with the Interstate Commerce Commission by a rail carrier providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title, the Commission may begin a proceeding, on its own initiative or on complaint of an interested party, to determine whether the proposed rate, classification, rule, or practice violates this subtitle. The Commission must give reasonable notice to interested parties before beginning a proceeding under this subsection but may act without allowing an interested party to file an answer or other formal pleading in response to its decision to begin the proceeding.

Ante, p. 1359.

Notice.

(b) (1) The Commission must complete a proceeding under this section and make its final decision by the end of the 7th month after the rate, classification, rule, or practice was to become effective. However, if the Commission reports to Congress by the end of the 7th month that it cannot make a final decision by that time and explains the reason for the delay, it may take an additional 3 months to complete the proceeding and make its final decision. If the Commission does not reach a final decision within the applicable time period, the rate, classification, rule, or practice—

Extension, report
to Congress.

(A) is effective at the end of that time period; or

(B) if already in effect at the end of that time period, remains in effect.

(2) If an interested party has filed a complaint under subsection (a) of this section, the Commission may set aside a rate, classification, rule, or practice that has become effective under this section if the Commission finds it to be in violation of this chapter.

(c) (1) Pending final Commission action in a proceeding under subsection (a) of this section, the Commission may suspend the proposed rate, classification, rule, or practice for 7 months after the time it would otherwise go into effect or, if a report is made under subsection (b) of this section, for 10 months after the time it would otherwise go into effect. However, the Commission may suspend a rate under this subsection only if it appears from specific facts shown by the verified complaint of a person that—

(A) without suspension, the proposed rate change will cause substantial injury to the complainant or the party represented by the complainant; and

(B) it is likely that the complainant will prevail on the merits.

(2) The burden is on the complainant to prove the facts required under paragraph (1) (A) and (B) of this subsection.

(d) If the Commission does not suspend a proposed rate increase that is the subject of a proceeding under this section, the Commission shall require the rail carriers involved to account for all amounts received under the increase until the Commission completes the proceeding or until 7 months after the increase becomes effective, whichever occurs first, or, if the proceeding is extended under subsection (b) of this section, until the Commission completes the proceeding or until 10 months after the increase becomes effective, whichever occurs first. The accounting must specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unjustified, plus interest at a rate equal to the average yield (on the date the proposed increase is filed) of marketable securities of the United States Government having a duration of 90 days. When any part of a proposed rate decrease is suspended and later found to comply with this subtitle, the rail carrier may refund any part of the portion of the decrease found to comply with this subtitle if the carrier makes the refund available equally to the shippers who participate in the rate according to the relative amounts of traffic shipped at that rate.

Accounting.

Refund
requirement.

(e) In a proceeding under this section, the burden is on the carrier proposing the changed rate, classification, rule, or practice to prove that the change is reasonable. The Commission shall specifically consider proof that the proposed rate, classification, rule, or practice will have a significantly adverse effect (in violation of section 10701, 10741—

10744, or 11103 of this title) on the competitive posture of shippers or consignees affected by the proposed rate, classification, rule, or practice. The Commission shall give proceedings under this section preference over all other proceedings related to rail carriers pending before it and make its decision at the earliest practical time.

49 USC 10708.

§ 10708. Investigation and suspension of new nonrail carrier rates, classifications, rules, and practices

(a) (1) The Interstate Commerce Commission may begin a proceeding to determine the lawfulness of a proposed rate, classification, rule, or practice immediately, on its own initiative or on application of an interested party when—

(A) a new individual or joint rate or individual or joint classification, rule, or practice affecting a rate is filed with the Commission by a common carrier, other than a rail carrier, under this subtitle; or

(B) a new or reduced rate or rule or practice that causes a reduction of a rate is filed with the Commission by a contract carrier under this subtitle.

Notice.

(2) The Commission must give reasonable notice before beginning a proceeding under this section but may act without allowing an interested carrier to file an answer or other formal pleading in response to its decision to begin the proceeding. The Commission may take whatever final action on a rate, classification, rule, or practice under this section, after a full hearing (whether completed before or after the rate, classification, rule, or practice goes into effect), as it could in a proceeding begun after a rate, classification, rule, or practice became effective.

(b) Pending final Commission action in a proceeding under subsection (a) of this section, the Commission may suspend the proposed rate, classification, rule, or practice at any time for not more than 7 months beyond the time it would otherwise go into effect by (1) delivering to each affected carrier, and (2) filing with the proposed rate, classification, rule, or practice, a statement of reasons for the suspension. If the Commission does not take final action during the suspension period, the proposed rate, classification, rule, or practice is effective at the end of that period. However, if an increase in a rate for, or related to, transportation of property by an express, sleeping car, or pipeline carrier becomes effective under this subsection, the Commission may require the interested carrier to account for all amounts received under it and specify by whom and on whose behalf those amounts were paid. When the Commission takes final action, it may require the carrier to refund, with interest, to the persons on whose behalf those amounts were paid, the part of the increased rate found to be in violation of this subtitle.

Accounting.

Refund
requirement.

(c) In a proceeding under this section, the burden is on the carrier proposing the changed rate, classification, rule, or practice to prove that the change is reasonable. The Commission shall give proceedings under this section preference over all other proceedings related to that type of carrier pending before it and make its decision at the earliest practical time.

49 USC 10709.

§ 10709. Determination of market dominance in rail carrier rate proceedings

“Market
dominance.”

(a) In this section, “market dominance” means an absence of effective competition from other carriers or modes of transportation for the transportation to which a rate applies.

(b) When a rate for transportation by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title is challenged as being unreasonably high, the Commission shall determine, within 90 days after the start of a proceeding under section 10707 of this title to investigate the lawfulness of that rate, whether the carrier proposing the rate has market dominance over the transportation to which the rate applies. The Commission may make that determination on its own initiative or on complaint. A finding by the Commission that the carrier does not have market dominance is determinative in a proceeding under this subtitle related to that rate or transportation unless changed or set aside by the Commission or set aside by a court of competent jurisdiction.

Ante, p. 1359.

(c) When the Commission finds in any proceeding that a rail carrier proposing or defending a rate for transportation has market dominance over the transportation to which the rate applies, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. However, a finding of market dominance does not establish a presumption that the proposed rate exceeds a reasonable maximum. This subsection does not limit the power of the Commission to suspend a rate under section 10707(c) of this title. However, if the Commission has found that a carrier does not have market dominance over the transportation to which the rate applies, the Commission may suspend an increase in that rate as being in excess of a reasonable maximum for that transportation only if it specifically changes or sets aside its prior determination of market dominance.

Suspension.

§ 10710. Elimination of discrimination against recyclable materials

49 USC 10710.

The Interstate Commerce Commission shall maintain regulations that will eliminate discrimination against the transportation of recyclable materials in rate structures and in other Commission practices where discrimination exists.

§ 10711. Effect of certain sections on rail rates and practices

49 USC 10711.

Sections 10701 (a) and (b), 10707, 10709, 10727, and 10728 of this title, related to rail carriers, do not—

(1) modify the application of sections 10701(c), 10726, 10741–10744, or 11103 of this title in determining whether a rate or practice complies with this subtitle;

(2) make a competitive practice that is unfair, destructive, predatory, or otherwise undermines competition that is necessary in the public interest comply with this subtitle;

(3) affect a law in existence on February 5, 1976, or the authority of the Interstate Commerce Commission related to rate relationships between ports; or

(4) affect the authority and responsibility of the Commission to guarantee the equalization of rates in the same port.

SUBCHAPTER II—SPECIAL CIRCUMSTANCES

§ 10721. Government traffic

49 USC 10721.

(a)(1) Except as provided in this section, the full applicable commercial rate shall be paid for transportation for the United States Government by a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission

Increased
revenues.

under this subtitle. Section 5 of title 41 does not apply when transportation for the United States Government can be obtained from a common carrier lawfully operating in the area where the transportation will be provided. When prescribing rates for transportation or service by those common carriers, the Commission shall consider increased revenues those carriers receive under this subsection to reflect those increases in appropriate readjustments of their rates.

(2) Paragraph (1) of this subsection does not apply, and the law related to compensation for transportation for the United States Government in effect immediately before September 18, 1940, applies to a rail carrier if that carrier, or its predecessor in interest, received a grant of land from the United States to aid in constructing the railroad it operates but did not file a release with the Secretary of the Interior before September 18, 1941, of claims against the United States Government to, or arising out of, lands that were granted, claimed to have been granted, or claimed should have been granted to that carrier or its predecessor in interest. This paragraph does not require a rail carrier to reconvey to the United States land patented or certified to it or prevent the patent of land that the Secretary of the Interior found was sold by the carrier to an innocent purchaser for value or as preventing the patent of land listed or selected by the carrier and finally approved by the Secretary of the Interior to the extent that issuance of those patents is authorized by law.

Ante, pp. 1359,
1361, 1365.

(b) (1) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title may transport individuals for the United States Government without charge or at reduced rates. The carriers may transport custom inspectors and immigration officers without charge. A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title shall provide transportation for the United States Postal Service under chapters 50 and 52 of title 39, and may transport property for the United States Government, a State, or municipal government without charge or at reduced rates.

Ante, p. 1358.

39 USC 5001 *et*
seq., 5201 *et seq.*

Quoted or
tendered rate,
filing.

(2) Unless a carrier is advised by the United States Government that disclosure of a quotation or tender of a rate established under paragraph (1) of this subsection for transportation provided to the United States Government would endanger the national security, the carrier shall file the quoted or tendered rate, including a retroactive rate made after the transportation has been provided, concurrently, with the Commission and the department, agency, or instrumentality of the United States Government for which the quotation or tender was made or for which the proposed transportation is to be provided. A carrier may quote or tender a rate established under an agreement made and approved under section 10706 of this title, but the exemption from the antitrust laws provided by that section applies only when the filing requirements of this paragraph are met.

(c) A different policy, rule of rate making, system of accounting, method of determining costs of transportation, value of property, or rate of return may not be applied to a water carrier owned or controlled by the United States Government than is applied to a water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title.

49 USC 10722.

§ 10722. Special passenger rates

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I,

II, or III of chapter 105 of this title may establish mileage, excursion, and commutation passenger rates including joint interchangeable 5,000 mile passenger rates with the privilege of carrying an amount of baggage without charge for at least 1,000 miles. A carrier that establishes a rate under this subsection may issue tickets reflecting that rate. A carrier that establishes a joint interchangeable 5,000 mile passenger rate shall also establish rules related to that rate specifying the amount of baggage that may be carried without charge under it.

Ante, pp. 1359, 1361, 1365.

Ticket issuance.
Baggage charge, rules.

(b) A common carrier providing transportation subject to the jurisdiction of the Commission under one of those subchapters may establish reduced rates for individuals when the cost of that transportation is an expense of an individual who—

(1) is a member of the armed forces of the United States or another country when that individual is traveling in uniform on official leave, furlough, or pass; or

(2) has been released from the armed forces of the United States not more than 30 days before beginning that transportation and is traveling home or to a prospective place of abode.

(c) A common carrier providing transportation subject to the jurisdiction of the Commission under one of those subchapters may provide transportation without charge for an individual who is—

(1) a necessary caretaker of livestock, poultry, milk, or fruit;

(2) an executive officer, general chairman, or counsel of an employee organization authorized to represent employees of that carrier under chapter 8 of title 45;

(3) an employee in charge of the mails when working or traveling to or from work;

(4) a newsboy on a train;

(5) a baggage agent; or

(6) a witness attending a legal investigation in which that carrier has an interest.

45 USC 151 *et seq.*

(d) (1) In this subsection—

Definitions.

(A) "employee of a carrier" includes an individual who—

(i) is furloughed, pensioned, or not on active duty because of advanced age or infirmity that occurred while the individual was employed by that carrier;

(ii) is being transported for purposes of reemployment by that carrier; or

(iii) was killed while employed by a carrier.

(B) "family" refers to the family of an individual named in clause (A) of this paragraph and includes the widow or minor child of an employee who died while employed by a carrier.

(2) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title may provide transportation without charge for officers and employees (and their families) of that carrier, another carrier (by exchange of passes or tickets), or a telegraph, telephone, or cable company. A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter may provide services related to movement of property for those individuals without charge. However, transportation of, or service provided for, household goods must be due to a change in the place of employment of an officer or employee while employed by that carrier.

§ 10723. Charitable purposes

49 USC 10723.

(a) (1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter

Ante, pp. 1359,
1361, 1365.

I, II, or III of chapter 105 of this title may provide transportation without charge for—

(A) an indigent or homeless individual (including an individual transported by a hospital, charitable organization, or municipal government and the necessary agents employed in that transportation);

(B) an individual who is confined to or about to enter or return home after discharge from a—

(i) Veterans' Administration facility;

(ii) State home for disabled volunteer soldiers; or

(iii) soldiers' and sailors' home, under an arrangement with the board of managers of that facility;

(C) a minister of religion; and

(D) an individual who is confined to a hospital or charitable facility.

(2) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title may provide transportation for property without charge or at a reduced rate for—

(A) a charitable purpose, including transportation referred to in paragraph (1) of this subsection; or

(B) use in a public exhibition.

(b) (1) A common carrier subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter may provide transportation without charge to an individual who is—

(A) engaged only in charitable work;

(B) injured in an accident (together with the physicians and nurses attending that individual); or

(C) a traveling secretary of a railroad Young Men's Christian Association.

(2) That carrier may also establish a rate and related rule equal to the rate charged for the transportation of one individual when that rate is for the transportation of—

(A) a totally blind individual and an accompanying guide or a dog trained to guide the individual; or

(B) a disabled individual and accompanying attendant when required because of the disability.

49 USC 10724.

§ 10724. Emergency rates

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may transport passengers without charge to provide relief during general emergencies.

(b) (1) The Commission may authorize a common carrier providing transportation or service subject to its jurisdiction under chapter 105 of this title to give reduced rates for service and transportation of property to or from an area in the United States to provide relief during emergencies. When the Commission takes action under this subsection, it must—

(A) define the area of the United States in which the reduced rates will apply;

(B) specify the period during which the reduced rates are to be in effect; and

(C) define the class of persons entitled to the reduced rates.

(2) The Commission may specify those persons entitled to reduced rates by reference to those persons designated as being in need of relief by the United States Government or by a State government authorized

Ante, p. 1358.

to assist in providing relief during the emergency. The Commission may act under this subsection without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

Ante, p. 1345.
5 USC 551.
49 USC 10725.

§ 10725. Special freight forwarder rates

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may establish—

Ante, pp. 1359,
1361, 1365.

(1) assembling rates and related classifications and rules for transportation of less-than-carload or less-than-truckload shipments to a place for further movement as part of a carload or truckload shipment; and

(2) distribution rates and related classifications and rules for transportation of less-than-carload or less-than-truckload shipments moving from a place to which those shipments have moved as a part of a carload or truckload shipment.

(b) A rate and related classification and rule established under subsection (a) of this section applies to freight forwarders and other persons using common carrier transportation under like conditions and may differ from other rates and related classifications and rules that contemporaneously apply to the same common carrier transportation when the difference is justified by a difference in the respective conditions under which that transportation is used. A rate referred to in subsection (a) (1) or (2) of this section may not be established to cover the line-haul transportation between the principal concentration place and the principal break-bulk place.

(c) When establishing a rate, classification, rule, or practice, a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may consider the type of property tendered to it by a freight forwarder for transportation when the property is in parcels that do not exceed 70 pounds in weight or 100 inches in length and girth combined. The carrier may establish the lowest rate for the transportation that allows it to receive adequate compensation for transporting the property.

§ 10726. Long and short haul transportation

49 USC 10726.

(a) (1) A carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I or III of chapter 105 of this title (except an express carrier) may not charge or receive more compensation for the transportation of property of the same kind or of passengers—

(A) for a shorter distance than for a longer distance over the same line or route in the same direction (the shorter distance being included in the longer distance); or

(B) under a through rate than under the total of the intermediate rates it may charge or receive under this chapter.

This paragraph does not authorize a carrier to charge or receive equal compensation for transportation over a shorter distance than a longer distance.

(2) Notwithstanding paragraph (1) of this subsection, a carrier operating over a circuitous line or route to or from a place in competition with another carrier of the same type that operates over a more direct line or route may establish a rate (otherwise complying with this chapter) for that transportation to meet the rate of the carrier operating over the more direct line or route. A rate established for transportation over a circuitous route under this subsection is not evidence of the compensatory character of rates in other proceedings.

Relief. (b) In special cases, the Commission may authorize a carrier to charge less for transportation over a longer distance than it charges for transportation over a shorter distance. The Commission may prescribe the extent to which a carrier authorized to charge less under this subsection may be granted relief from subsection (a) of this section. However, the Commission may not authorize a rate—

(1) to or from the more distant place unless it is reasonably compensatory; or

(2) because of potential water competition not actually in existence.

(c) A rail carrier that reduces a rate for the transportation of property in competition with a water route to or from competitive places may increase the rate only if, after a proceeding, the Commission finds that the increase is proposed because of a change in conditions other than the elimination of water competition.

Proceeding.

(d) The Commission shall begin a proceeding under subsection (b) of this section on application of a carrier. A carrier may file a proposed rate with its application, and if the application is approved, the Commission shall allow the rate to become effective one day after the approval becomes effective.

49 USC 10727.

Standards and procedures.

§ 10727. Demand-sensitive rates

(a) The Interstate Commerce Commission shall maintain standards and procedures to permit seasonal, regional, or peak-period demand rates for transportation by rail carrier subject to its jurisdiction under subchapter I of chapter 105 of this title, that—

(1) provide sufficient incentives to shippers, through rescheduling and advance planning, to reduce peak-period shipments;

(2) generate additional revenue for rail carriers;

(3) make better use of the national supply of freight cars;

(4) improve—

(A) the transportation of property by rail carriers;

(B) the level of employment by rail carriers; and

(C) the financial stability of markets served by rail carriers.

Annual report to Congress, legislative recommendations.

49 USC 10728.

(b) The Commission shall submit to Congress an annual report on the implementation of rates under this section and shall include recommendations for additional legislation needed to make it easier to establish those rates.

§ 10728. Separate rates for distinct rail services

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may, on its own initiative or at the request of a shipper or receiver of property, establish separate rates for distinct rail services to—

(1) encourage competition;

(2) promote increased reinvestment by rail carriers; and

(3) encourage and make easier increased non-railroad investment in the production of rail services.

Expeditious procedures.

(b) The Commission shall maintain expeditious procedures to permit separate rates for distinct rail services to—

(1) encourage those services to be priced in accordance with the cash-outlay incurred by the carrier and the demand for them; and

(2) enable shippers and receivers to evaluate transportation and related rates and alternatives.

§ 10729. Rail carriers; incentive for capital investment

49 USC 10729.

(a) A proposed rate, classification, rule, or practice for transportation by a rail carrier subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title requiring a total capital investment of at least \$1,000,000 to implement shall be established and become effective under this section. This section applies whether the investment is made individually or collectively by the carrier or by a shipper, receiver, or agent for any of them, or by a third party.

Ante, p. 1359.

(b) A rail carrier may file a notice of intent to establish a rate, classification, rule, or practice under subsection (a) of this section with the Commission. The notice must include a sworn affidavit detailing the anticipated capital investment. Unless the Commission after holding a proceeding under subsection (c) of this section, decides by the 180th day after the notice is filed that the proposed rate, classification, rule, or practice would violate this subtitle, the carrier may establish that rate, classification, rule, or practice at any time during the next 180 days, and it may become effective 30 days after it is established. Once a rate, classification, rule, or practice becomes effective under this section, the Commission may not, for 5 years, suspend or set it aside as violating section 10701, 10726, 10741-10744, or 11103 of this title. However, the Commission may order the rate, classification, rule, or practice to be revised to a level equal to the variable costs of providing the transportation when the Commission finds the level then in effect reduces the going concern value of the carrier.

Notice of intent, filing.

(c) On request of an interested person, the Commission shall hold a proceeding to investigate and determine whether the rate, classification, rule, or practice proposed to be established under this section complies with this subtitle. The Commission must give reasonable notice to interested parties before beginning a proceeding under this subsection but may act without allowing an interested party to file an answer or other formal pleading.

Proceeding.

Notice.

§ 10730. Rates and liability based on value

49 USC 10730.

The Interstate Commerce Commission may require or authorize a carrier providing transportation or service subject to its jurisdiction under subchapter I, II, or IV of chapter 105 of this title, to establish rates for transportation of property under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper, or by a written agreement, when that value would be reasonable under the circumstances surrounding the transportation. A rate may be made applicable under this section to livestock only if the livestock is valuable chiefly for breeding, racing, show purposes, or other special uses. A tariff filed with the Commission under subchapter IV of this chapter shall refer specifically to the action of the Commission under this section.

Ante, pp. 1359, 1361, 1369.**§ 10731. Investigation of discriminatory rail rates for transportation of recyclable or recycled materials**

49 USC 10731.

(a) In this section—

Definitions.

(1) "recyclable material" means material collected or recovered from waste for a commercial or industrial use whether the collection or recovery follows end usage as a product.

(2) "virgin material" means raw material, including previously unused metal or metal ore, woodpulp or pulpwood, textile fiber or material, or other resource that, through the application

of technology, is or will become a source of raw material for commercial or industrial use.

(b) When appropriate, the Interstate Commerce Commission shall—

(1) investigate the rate structure for the transportation of recyclable or recycled materials and competing virgin material by rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title and the manner in which that rate structure has been affected by successive general rate increases approved by the Commission for those carriers;

(2) determine whether those rate increases affect any part of the rate structure in violation of section 10701 or 10741 of this title and order the rate found to be in violation of either of those sections removed from the rate structure; and

(3) report to the President and Congress, in each of the annual reports of the Commission for 1978 and 1979, and in other appropriate reports, all proceedings started or completed under this subsection.

(c) A determination under subsection (b) (2) of this section may be made only after a public hearing. During the hearing, the rail carriers have the burden of proving that rate increases that affect the rate structure applicable to the transportation of those competing materials comply with sections 10701 and 10741 of this title.

(d) In cooperation with the Commission, the Secretary of Transportation shall maintain a research, development, and demonstration program to develop and improve transport terminal operations, transport service characteristics, transport equipment, and collection and processing methods to facilitate the competitive and efficient transportation of recyclable or recycled materials by rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

SUBCHAPTER III—LIMITATIONS

49 USC 10741.

§ 10741. Prohibitions against discrimination by common carriers

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not charge or receive from a person a different compensation (by using a special rate, rebate, drawback, or another means) for a service rendered, or to be rendered, in transportation the carrier may perform under this subtitle than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates.

(b) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title may not subject a person, place, port, or type of traffic to unreasonable discrimination. However, subject to subsection (c) of this section, this subsection does not apply to discrimination against the traffic of another carrier providing transportation by any mode.

(c) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that

Ante, p. 1359.

Proceedings,
report to
President and
Congress.

Public hearing.

Research
program,
cooperation with
Transportation
Secretary.

Ante, p. 1358.

chapter may not subject a freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter to unreasonable discrimination whether or not the freight forwarder is controlled by that carrier.

Ante, pp. 1359, 1361, 1365.
Ante, p. 1369.

(d) Differences between the rates, classifications, rules, and practices of water and rail common carriers in effect for their respective types of transportation do not constitute a violation of this section or an unfair or destructive competitive practice under this subtitle.

§ 10742. Facilities for interchange of traffic

49 USC 10742.

A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I or III of chapter 105 of this title shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another common carrier under either of those subchapters.

§ 10743. Payment of rates

49 USC 10743.

(a) Except as provided in subsection (b) of this section, a common carrier (except a pipeline or sleeping car carrier) providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under this subtitle shall give up possession at destination of property transported by it only when payment for the transportation or service is made.

(b) (1) Under regulations of the Commission governing the payment for transportation and service and preventing discrimination, those carriers may give up possession at destination of property transported by them before payment for the transportation or service. The regulations of the Commission may provide for weekly or monthly payment for transportation provided by motor common carriers and for periodic payment for transportation provided by water common carriers.

(2) Such a carrier (including a motor common carrier being used by a freight forwarder) may extend credit for transporting property for the United States Government, a State, a territory or possession of the United States, or a political subdivision of any of them.

§ 10744. Liability for payment of rates

49 USC 10744.

(a) (1) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail, motor, or water common carrier under this subtitle. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—

(A) of the agency and absence of beneficial title; and

(B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

(2) When the consignee is liable only for rates billed at the time of delivery under paragraph (1) of this subsection, the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial

owner, is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the carrier, and a reconsignor or diverter giving a rail carrier, erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

(b) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor, named in the bill of lading as consignee, is determined under this subsection when the transportation is provided by a rail or express carrier under this subtitle. When the shipper or consignor gives written notice, before delivery of the property, to the line-haul carrier that is to make ultimate delivery—

(1) to deliver the property to another party identified by the shipper or consignor as the beneficial owner of the property; and

(2) that delivery is to be made to that party on payment of all applicable transportation rates;

that party is liable for the rates billed at the time of delivery and for additional rates that may be found to be due after delivery if that party does not pay the rates required to be paid under clause (2) of this subsection on delivery. However, if the party gives written notice to the delivering carrier before delivery that the party is not the beneficial owner of the property and gives the carrier the name and address of the beneficial owner, then the party is not liable for those additional rates. A shipper, consignor, or party to whom delivery is made that gives the delivering carrier erroneous information about the identity of the beneficial owner, is liable for the additional rates regardless of the bill of lading or contract under which the property was transported. This subsection does not apply to a prepaid shipment of property.

(c) (1) A rail carrier may bring an action to enforce liability under subsection (a) of this section. That carrier must bring the action during the period provided in section 11706(a) of this title or by the end of the 6th month after final judgment against it in an action against the consignee, or the beneficial owner named by the consignee or agent, under that section.

(2) A water common carrier may bring an action to enforce liability under subsection (a) of this section. That carrier must bring the action by the end of the 2d year after the claim accrues or by end of the 6th month after final judgment against it in an action against the consignee or beneficial owner named by the consignee by the end of that 2-year period.

(3) A rail or express carrier may bring an action to enforce liability under subsection (b) of this section. That carrier must bring the action during the period provided in section 11706(a) of this title or by the end of the 6th month after final judgment against it in an action against the shipper, consignor, or other party under that section.

§ 10745. Continuous carriage of freight

A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not enter a combination or arrangement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination whether by change of time schedule, carriage in different cars, or by other means. The car-

Post, p. 1452.

49 USC 10745.

Ante, p. 1359.

riage of freight by those carriers is considered to be a continuous carriage from the place of shipment to the place of destination when a break of bulk, stoppage, or interruption is not made in good faith for a necessary purpose, and with the intent of avoiding or unnecessarily interrupting the continuous carriage or of evading this subtitle.

§ 10746. Transportation of commodities manufactured or produced by a rail carrier 49 USC 10746.

A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not transport from a State or territory or possession of the United States to another State, territory, or possession or a foreign country, an article or commodity that—

Ante, p. 1359.

(1) is manufactured, mined, or produced by the carrier or under its authority; or

(2) is owned by the carrier or in which it has an interest.

However, a rail carrier may transport such an article or commodity when it is necessary and intended for use in the business of that carrier. This section does not apply to timber and products manufactured from timber.

Timber products, exemption.

§ 10747. Transportation services or facilities furnished by shipper 49 USC 10747.

A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title may publish in a tariff filed with the Commission under subchapter IV of this chapter a charge or allowance for transportation or service for property when the owner of the property, directly or indirectly, furnishes a service related to or an instrumentality used in the transportation or service. The Commission may prescribe the maximum reasonable charge or allowance a carrier subject to its jurisdiction may pay for a service or instrumentality furnished under this section. The Commission may begin a proceeding under this section on its own initiative or on application.

Ante, p. 1358.

Ante, p. 1369.

Maximum charge or allowance.

Proceeding.

§ 10748. Transportation of livestock by rail carrier 49 USC 10748.

(a) Transportation entirely by railroad of ordinary livestock in carload lots to public stockyards shall include necessary services of unloading and reloading in route, delivery of inbound shipments at those stockyards into suitable pens, and receiving and loading outbound shipments at those stockyards. A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may charge a shipper, consignee, or owner an extra amount for those services only if, under Commission regulations, the unloading or reloading in route is at the request of the shipper, consignee, or owner, to try an intermediate market, or to comply with quarantine regulations.

(b) Subsection (a) of this section does not affect the duties and liabilities of a rail carrier in existence on February 28, 1920, under a law related to the transportation of other than ordinary livestock or the duty of providing transportation for shipments other than shipments to or from public stockyards.

§ 10749. Exchange of services and limitation on use of common carriers by freight forwarders 49 USC 10749.

(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title may contract with a telephone, telegraph, or cable company to exchange services.

Ante, p. 1369.

(b) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title may use a carrier, including a carrier referred to in this subsection, to transfer, collect, or deliver in a terminal area. However, to provide other services, a freight forwarder may only use—

(1) a rail, express, motor, or water common carrier providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title including—

Ante, pp. 1363, 1365.

(A) a motor common carrier providing exempt transportation under section 10525 or 10526(a) (8) of this title; or

Ante, p. 1366.

(B) a water common carrier providing exempt transportation under section 10542(a) of this title or transportation between places in Alaska or Hawaii and between those places and other places in the United States;

49 USC 1301 *et seq.*

(2) an air carrier subject to the jurisdiction of the Civil Aeronautics Board under chapter 20 of this title; or

(3) the Alaska Railroad.

49 USC 10750.

§ 10750. Demurrage charges

Rules.

A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to—

Ante, p. 1359.

(1) freight car use and distribution; and

(2) maintenance of an adequate supply of freight cars to be available for transportation of property.

SUBCHAPTER IV—TARIFFS AND TRAFFIC

49 USC 10761.

§ 10761. Transportation prohibited without tariff

(a) Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide that transportation or service only if the rate for the transportation or service is contained in a tariff that is in effect under this subchapter. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

Relief.

(b) The Commission may grant relief from subsection (a) of this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

Ante, p. 1337.
Proceeding.

49 USC 10762.

§ 10762. General tariff requirements

Rates,
publication and
filing.

(a) (1) A carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (except a motor common carrier) shall publish and file with the Commission tariffs containing the rates and (A) if a common carrier, classifications, rules, and practices related to those rates, and (B) if a contract carrier, rules and practices related to those rates, established under this chapter for transportation or

service it may provide under this subtitle. A motor common carrier shall publish and file with the Commission tariffs containing the rates for transportation it may provide under this subtitle. The Commission may prescribe other information that motor common carriers shall include in their tariffs. A motor contract carrier that serves only one shipper and has provided continuous transportation to that shipper for at least one year may file only its minimum rates unless the Commission finds that filing of actual rates is required in the public interest.

(2) Carriers that publish tariffs under paragraph (1) of this subsection shall keep them open for public inspection. A rate contained in a tariff filed by a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of chapter 105 shall be stated in money of the United States. A tariff filed by a motor or water contract carrier or by a freight forwarder providing transportation or service subject to the jurisdiction of the Commission under subchapter II, III, or IV of that chapter, respectively, may not become effective for 30 days after it is filed.

(b) (1) The Commission shall prescribe the form and manner of publishing, filing, and keeping tariffs open for public inspection under this section. The Commission may prescribe specific charges to be identified in a tariff published by a common carrier providing transportation or service subject to its jurisdiction under subchapter I, III, or IV of that chapter, but those tariffs must identify plainly—

(A) the places between which property and passengers will be transported;

(B) terminal, storage, and icing charges (stated separately) if a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter;

(C) terminal charges if a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter III or IV of that chapter;

(D) privileges given and facilities allowed; and

(E) any rules that change, affect, or determine any part of the published rate.

(2) A joint tariff filed by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter shall identify the carriers that are parties to it. The carriers that are parties to a joint tariff, other than the carrier filing it, must file a concurrence or acceptance of the tariff with the Commission but are not required to file a copy of the tariff. The Commission may prescribe or approve what constitutes a concurrence or acceptance.

(c) (1) When a common carrier providing transportation or service subject to the jurisdiction of the Commission (A) under subchapter I of chapter 105 of this title proposes to change a rate, or (B) under another subchapter of that chapter proposes to change a rate, classification, rule, or practice, the carrier shall publish, file, and keep open for public inspection a notice of the proposed change as required under subsections (a) and (b) of this section.

(2) When a contract carrier providing transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title proposes to establish a new rate or to reduce a rate, directly or by changing a rule or practice related to the rate or the value of service under the rate, the carrier shall publish, file, and keep open for public inspection a notice of the new or reduced rate as required under subsections (a) and (b) of this section.

Public inspection.

Ante, pp. 1361, 1365, 1369.

Charges, identification.

Ante, p. 1359.

Joint tariffs, concurrence or acceptance.

Proposed changes, notice.

New or reduced rates, notice.

(3) A notice filed under this subsection shall plainly identify the proposed change or new or reduced rate and indicate its proposed effective date. A proposed change and a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section.

(d) (1) The Commission may reduce the 30-day period of subsections (a) and (c) of this section if cause exists. The Commission may change the other requirements of this section if cause exists in particular instances or as they apply to special circumstances.

Tariff
simplification,
regulations.

(2) The Commission may prescribe regulations for the simplification of tariffs by carriers providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title and permit them to change rates, classifications, rules, and practices without filing complete tariffs that cover matter that is not being changed when the Commission finds that action to be consistent with the public interest. Those carriers may publish new tariffs that incorporate changes or plainly indicate the proposed changes in the tariffs then in effect and kept open for public inspection. However, the Commission shall require that all rates of rail carriers and rail rate-making associations be incorporated in their individual tariffs by the end of the 2d year after initial publication of the rate, or by the end of the 2d year after a change in a rate becomes effective, whichever is later. The Commission may extend those periods if cause exists, but if it does, it must send a notice of the extension and a statement of the reasons for the extension to Congress. A rate not incorporated in an individual tariff as required by the Commission is void.

Extensions,
statement to
Congress.

Rejections.

(e) The Commission may reject a tariff submitted to it by a common carrier under this section if that tariff violates this section or regulation of the Commission carrying out this section.

Relief.

(f) The Commission may grant relief from this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The Commission may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.

Ante, p. 1337.
Proceeding.

49 USC 10763.

§ 10763. Designation of certain routes by shippers or Interstate Commerce Commission

(a) (1) When a person delivers property to a rail carrier for transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, the person may direct the carrier to transport the property over an established through route. When competing rail lines constitute a part of the route, the person shipping the property may designate the lines over which the property will be transported. The designation must be in writing. A carrier may be directed to transport property over a particular through route when—

Ante, p. 1359.

(A) there are at least 2 through routes over which the property could be transported;

(B) a through rate has been established for transportation over each of those through routes; and

(C) the carrier is a party to those routes and rates.

(2) A carrier directed to route property transported under paragraph (1) of this subsection must issue a through bill of lading containing the routing instructions and transport the property according to the instructions. When the property is delivered to a connecting carrier, that carrier must also receive and transport it according to

the routing instructions and deliver it to the next succeeding carrier or consignee according to the instructions.

(b) If no direction is made under subsection (a) of this section, the Commission may designate the route over which the property may be transported after arrival at the end of the route of one carrier or at a junction with the route of another carrier when the property is to be delivered to another carrier for further transportation. The Commission may act under this subsection when the public interest and a fair distribution of traffic require that action.

(c) The Commission may prescribe exceptions to the authority of a person to direct the movement of traffic under subsection (a) of this section. Exceptions.

§ 10764. Arrangements between carriers: copy to be filed with Interstate Commerce Commission 49 USC 10764.

(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall file with the Commission a copy of each arrangement related to transportation affected by this subtitle that the carrier has with another common carrier. The Commission may require other carriers and brokers subject to its jurisdiction under chapter 105 to file a copy of each arrangement related to transportation or service affected by this subtitle that they have with other persons. Ante, p. 1359.

(2) When the Commission finds that filing a class of arrangements by a carrier subject to its jurisdiction under subchapter I of that chapter is not necessary in the public interest, the Commission may except the class from paragraph (1) of this subsection. Exception.

(b) The Commission may disclose the existence or contents of an arrangement between a contract carrier and a shipper filed under subsection (a) of this section only if the disclosure is—

(1) limited to those parts of the arrangement that are necessary to indicate the extent of its failure to conform to a tariff then in effect under section 10762 of this title; or

(2) consistent with the public interest and made as a part of the record in a formal proceeding.

§ 10765. Water transportation under arrangements with certain other carriers 49 USC 10765.

(a) The Interstate Commerce Commission may require a common carrier providing transportation or service subject to its jurisdiction under chapter 105 of this title that makes an arrangement with a water carrier (whether or not subject to its jurisdiction under this subtitle) providing transportation from a port in the United States to another country for the through transportation of property from a place in the interior of the United States to another country to make similar arrangements with steamship lines that provide transportation from that port to that country.

(b) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that transports property from a place in the United States through another country to a place in the United States shall publish and keep open for public inspection tariffs as required under section 10762 of this title. The tariffs shall identify the through rate established for that transportation to the United States from another country to which the carrier accepts property for shipment from the United States. Unless the through rates are available for public inspection under that section, Tariffs,
publication and
public inspection.

the property is subject to customs duties applicable to property produced in another country before the property may be admitted to the United States.

49 USC 10766.

§ 10766. Freight forwarder traffic agreements

Ante, p. 1369.

(a) A freight forwarder providing service subject to the jurisdiction of the Interstate Commerce Commission under subchapter IV of chapter 105 of this title may agree with another freight forwarder to load traffic jointly between places served under this subtitle. However, the Commission may cancel, suspend, or require changes in the agreement when the Commission finds the agreement is inconsistent with the transportation policy of section 10101 of this title.

Ante, p. 1337.

Contract, copy filing.

(b) A freight forwarder providing service subject to the jurisdiction of the Commission under that subchapter may contract with motor common carriers providing transportation subject to the jurisdiction of the Commission under subchapter II of that chapter, to provide transportation for the forwarder. A copy of that contract must be filed with the Commission. The contract may govern use by the freight forwarder of the services and instrumentalities of the motor common carrier and the compensation to be paid for the transportation. However, the parties to a contract must establish reasonable conditions and compensation that are consistent with the transportation policy of section 10101 of this title and do not unreasonably discriminate against a party or another freight forwarder. When a contract under this subsection governs line-haul transportation of property for a total distance of at least 450 highway miles in truckload lots between concentration and break-bulk places, the compensation paid to a motor common carrier under the contract may not be less than the rate for that transportation established under this chapter. When the Commission finds that a contract, or its conditions or compensation, under this subsection is or will be inconsistent with this subsection, the Commission shall prescribe consistent conditions and compensation.

Ante, p. 1361.

Conditions and compensation.

(c) The Commission may begin a proceeding under this section on its own initiative or on complaint.

SUBCHAPTER V—VALUATION OF PROPERTY

49 USC 10781.

§ 10781. Investigation and report by Interstate Commerce Commission

Ante, p. 1359.

(a) The Interstate Commerce Commission shall investigate, establish, and report the value of all property owned or used by each carrier providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title, except a street, suburban, or interurban electric rail carrier not operated as a part of a general railroad system of transportation. However, the Commission may investigate, establish, and report the value of property owned or used by such an electric rail carrier when the Commission decides that action is desirable in the public interest. When the Commission makes an investigation required to be made under this section, it must—

- (1) inventory and list the property of that carrier in detail;
- (2) indicate the value established under section 10782 of this title for that property; and

Classifications.

- (3) classify the physical property under classifications that conform, as nearly as practicable, to the classification of expenditures prescribed by the Commission for railroads and equipment.

(b) Except as provided in subsection (a) of this section, the Commission may prescribe—

- (1) the procedure to be followed when conducting an investigation under this subchapter;
- (2) the form in which to submit the results of the valuation; and
- (3) the classification of the elements that make up the established value.

The report for each investigation conducted under this subchapter shall indicate the value of the property of each common carrier as a whole and separately identify the value of its property in each State and territory and possession of the United States in which the property is located.

§ 10782. Requirements for establishing value

49 USC 10782.

(a) In carrying out an investigation of a common carrier required under section 10781 of this title, the Interstate Commerce Commission shall—

(1) establish, for each piece of property except land owned or used by the carrier as a common carrier, the original cost to date, cost of reproduction new and cost of reproduction less depreciation, and analyze the methods used to establish those costs and the reasons for differences among them;

(2) establish other values, and elements of value, of that property and analyze the methods used to establish them and the reasons for differences between them and the cost values established under clause (1) of this subsection;

(3) establish separately from improvements, the original cost on the date of dedication to public use, of all lands, rights of way, and terminals owned or used by the carrier as a common carrier and establish their current value;

(4) identify property not held by the carrier as a common carrier, its original cost, and current value and analyze the methods of valuation used;

(5) establish the amount and value of assistance or grant of right of way made to the carrier, or to a previous corporation that operated its property, by the United States Government or by a State, county, or municipal government, or by an individual, association, or corporation and the amount and value of any concession and allowance made by the United States Government or another of those governments in consideration of that assistance; and

(6) identify the grants of land to that carrier, or to a previous corporation that operated its property, by the United States Government, or by a State, county, or municipal government, the amount of money derived from the sale of part of those grants, the value of the unsold parts (established as of the date acquired and currently), and the amount and value of any concession and allowance made by the carrier to the United States Government, or another of those governments, in consideration of that assistance or grant of land.

(b) The Commission may prescribe elements to consider in establishing the cost to date of property owned or used by a carrier. However, in establishing that cost, the Commission shall investigate and include in those elements—

(1) the history and organization of the corporation that currently operates the property and of previous corporations that also operated that property;

(2) increases or decreases of securities during reorganization of that corporation or such a previous corporation;

(3) money received through the issuance of securities by that corporation or such a previous corporation;

(4) syndicating, banking, and other financial arrangements under which those securities were issued and the expenses thereof;

(5) the net and gross earnings of those corporations; and

(6) the expenditure of all money and the purposes of those expenditures in as much detail as the Commission determines to be necessary.

49 USC 10783.

§ 10783. Cooperation and assistance of carriers

Ante, p. 1359.

(a) Each common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall cooperate with and assist the Commission in valuing property under this subchapter. The Commission may order those carriers to—

(1) give to the Commission maps, profiles, contracts, engineering reports, and other records to assist it in investigating and establishing the value of that carrier's property; and

(2) assist the Commission in valuing property under this subchapter in other ways, including giving its agents free access to its right-of-way, property, and records on request.

(b) A rail carrier whose property is being valued under this subchapter shall—

(1) transport employees of the United States Government who are making surveys and other examinations of the physical property of that carrier in the course of that valuation when reasonably required by them in the actual discharge of their duties;

(2) transport and store the cars of the United States Government that are used to house and maintain those employees when reasonably required during the valuation; and

(3) transport supplies necessary to maintain those employees and the property of the United States Government actually used on the railroad during the valuation.

Special service,
compensation
and accounting.

(c) The transportation required to be provided under subsection (b) of this section is considered a special service for which the Commission may prescribe the compensation to be paid. A rail carrier shall give the Commission an accurate accounting of the transportation provided under this section when required by the Commission.

Records
inspection.

(d) The Commission shall keep records compiled under this subchapter open for public inspection. However, the Commission may order those records closed to the public but must state its reasons for closing them.

49 USC 10784.

§ 10784. Revision of property valuations

(a) When the Interstate Commerce Commission completes an initial valuation of property under this subchapter, it shall thereafter correct, revise, and supplement that valuation, including previous inventories and classifications, by keeping itself informed of new construction, changes in condition, quantity, use, and classification of

property on which an initial valuation was made and the cost of all improvements to, and changes in investment, in that property. The Commission may keep itself informed of current changes in costs and values of railroad property to carry out this section.

(b) The Commission may order a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to give it reports and information needed to carry out this section.

Reports.

Ante, p. 1359.

§ 10785. Finality of valuation: notice, protest, and review

49 USC 10785.

(a) The Interstate Commerce Commission shall notify the carrier, the Attorney General, and the chief executive officer of each State in which property being valued under this subchapter is located, of the completion of a tentative valuation of that property. The Commission may also notify other parties. The notice must be sent by certified mail and must indicate the valuation established for each of that carrier's classes of property. A valuation of property under this subchapter becomes final if a protest is not filed within 30 days after notice of the tentative valuation of that property is given. When the tentative valuation becomes final under this subsection, the effective date is the date of the tentative valuation.

(b) When a carrier files a protest of a tentative valuation, the Commission shall begin a proceeding to consider the protest. If the Commission decides that a tentative valuation should be changed, it may make the necessary changes. The tentative valuation, as changed, becomes final and is effective on the date of the final action of the Commission under this subsection.

Proceeding.

(c) The Commission shall publish final valuations and classifications of property established under this subchapter. A final valuation or classification that has become effective under this subchapter is prima facie evidence of the value of the property in a proceeding under this subtitle and in a judicial proceeding to enforce, enjoin, set aside, annul, or suspend an action of the Commission.

Publication.

(d) When evidence is introduced at the trial of an action involving a final valuation of property established by the Commission and found by the court to be different from the evidence offered to the Commission during a proceeding under subsection (b) of this section or in addition to that evidence and substantially affecting the valuation, the court shall send a copy of that evidence to the Commission and stay further proceedings in the action. The court may determine the duration of the stay of proceedings. The Commission shall consider the evidence and may change the final valuation established under this subchapter. The Commission shall complete its action and report to the court in the time determined by the court. If the Commission changes the valuation, the court must substitute the valuation as changed for the original valuation and give its judgment on the substituted valuation. If the Commission does not change the original valuation, the court must give judgment on the original valuation.

New evidence.

§ 10786. Applicability

49 USC 10786.

In addition to common carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, this subchapter applies to receivers and operating trustees of those carriers.

CHAPTER 109—LICENSING

SUBCHAPTER I—RAILROADS AND FERRIES

Sec.

- 10901. Authorizing construction and operation of railroad lines.
- 10902. Authorizing action to provide adequate, efficient, and safe facilities.
- 10903. Authorizing abandonment and discontinuance of railroad lines and rail transportation.
- 10904. Filing and procedure for applications to abandon or discontinue.
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SUBCHAPTER II—OTHER CARRIERS AND MOTOR CARRIER BROKERS

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SUBCHAPTER I—RAILROADS AND FERRIES

49 USC 10901.

§ 10901. Authorizing construction and operation of railroad lines

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may—

- (1) construct an extension to any of its railroad lines;
- (2) construct an additional railroad line;
- (3) acquire or operate an extended or additional railroad line;

or

- (4) provide transportation over, or by means of, an extended or additional railroad line;

only if the Commission finds that the present or future public convenience and necessity require or will be enhanced by the construction or acquisition (or both) and operation of the railroad line.

(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Commission shall—

- (1) send a copy of the application to the chief executive officer of each State that would be directly affected by the construction or operation of the railroad line;

- (2) send an accurate and understandable summary of the application to a newspaper of general circulation in each area that would be affected by the construction or operation of the railroad line;

- (3) have a copy of the summary published in the Federal Register;

Ante, p. 1359Application,
filing.Publication in
newspaper.Publication in
Federal Register.

(4) take other reasonable and effective steps to publicize the application; and

(5) indicate in each transmission and publication that each interested person is entitled to recommend to the Commission that it approve, deny, or take other action concerning the application.

(c) (1) If the Commission—

(A) finds public convenience and necessity, it may—

(i) approve the application as filed; or

(ii) approve the application with modifications and require compliance with conditions the Commission finds necessary in the public interest; or

(B) fails to find public convenience and necessity, it may deny the application.

(2) On approval, the Commission shall issue to the rail carrier a certificate describing the construction or acquisition (or both) and operation approved by the Commission. Certificate issuance.

§ 10902. Authorizing action to provide adequate, efficient, and safe facilities 49 USC 10902.

The Interstate Commerce Commission may authorize a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to take action necessary to provide adequate, efficient, and safe facilities to enable the rail carrier to perform its obligations under this subtitle, including extension of any of the carrier's railroad lines after issuance of a certificate under section 10901 of this title. The Commission may authorize a rail carrier to act under this section only if it finds that the expense involved will not impair the ability of the carrier to perform its obligations to the public. The Commission may conduct a proceeding on its own initiative or on application of an interested party. Ante, p. 1359.

Proceeding.

§ 10903. Authorizing abandonment and discontinuance of railroad lines and rail transportation 49 USC 10903.

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may—

(1) abandon any part of its railroad lines; or

(2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Commission finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Commission shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development. Adverse impact.

(b) (1) A proceeding to grant authority under subsection (a) of this section begins on application filed with the Commission. Subject to sections 10904–10906 of this title, if the Commission— Proceeding.

(A) finds public convenience and necessity, it shall—

(i) approve the application as filed; or

(ii) approve the application with modifications and require compliance with conditions that the Commission finds are required by public convenience and necessity; or

(B) fails to find public convenience and necessity, it shall deny the application.

Certificate.

(2) On approval, the Commission shall issue to the rail carrier a certificate describing the abandonment or discontinuance approved by the Commission. Each certificate shall also contain provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under section 11347 of this title and section 565(b) of title 45.

Post, p. 1439

(c) Except as provided in sections 10905 and 10906 of this title—

(1) if a certificate is issued without an investigation under section 10904(c) of this title, the abandonment or discontinuance may take effect under the certificate on the 30th day after the issuance of the certificate; or

(2) if a certificate is issued after an investigation under section 10904(c) of this title, the abandonment or discontinuance may take effect under the certificate on the 120th day after the issuance of the certificate.

49 USC 10904.

§ 10904. Filing and procedure for applications to abandon or discontinue

(a) (1) An application for a certificate of abandonment or discontinuance under section 10903 of this title, and a notice of intent to abandon or discontinue, must be filed with the Interstate Commerce Commission at least 60 days before the day on which the abandonment or discontinuance is to become effective.

(2) When a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title files an application and notice of intent, the notice shall include—

(A) an accurate and understandable summary of the rail carrier's application and the reasons for the proposed abandonment or discontinuance; and

(B) a statement indicating that each interested person is entitled to recommend to the Commission that it approve, deny, or take other action concerning the application.

(3) The rail carrier shall—

(A) send by certified mail a copy of the notice of intent to the chief executive officer of each State that would be directly affected by the proposed abandonment or discontinuance;

(B) post a copy of the notice in each terminal and station on each portion of a railroad line proposed to be abandoned or over which all transportation is to be discontinued;

(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located;

(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Commission) of the railroad line during the 12 months preceding the filing of the application; and

(E) attach to the notice filed with the Commission an affidavit certifying the manner in which clauses (A)–(D) of this paragraph have been satisfied.

(b) The burden is on the person applying for the certificate to prove that the present or future public convenience and necessity require or permit the abandonment or discontinuance.

(c) (1) During the period between the date the application is filed through the day immediately before the date proposed in the application that the abandonment or discontinuance become effective, the Commission shall, on petition, and may, on its own initiative, begin

an investigation to assist it in determining what disposition to make of the application. The order to conduct the investigation must be served on any affected rail carrier not later than the 5th day before the proposed effective date of the abandonment or discontinuance. An investigation may include public hearings at any location reasonably adjacent to the railroad line involved in the abandonment or discontinuance. The hearing may be held on the request of an interested party or on the initiative of the Commission.

(2) If an investigation is not conducted, the Commission shall act under section 10903(b) of this title by the last day of the period referred to in paragraph (1) of this subsection. If an investigation is to be conducted, the Commission shall postpone the proposed effective date of any part of the abandonment or discontinuance. The postponement shall be for a reasonable period of time necessary to complete the investigation.

(d) (1) In this subsection, "potentially subject to abandonment" has the meaning given the term in regulations of the Commission. The regulations may include standards that vary by region of the United States and by railroad or group of railroads.

"Potentially subject to abandonment."

(2) Each rail carrier shall maintain a complete diagram of the transportation system operated, directly or indirectly, by the carrier. The carrier shall submit to the Commission and publish amendments to its diagram that are necessary to maintain the accuracy of the diagram. The diagram shall—

(A) include a detailed description of each of its railroad lines potentially subject to abandonment; and

(B) identify each railroad line for which the carrier plans to file an application for a certificate under subsection (a) of this section.

(3) If an application for a certificate is opposed by—

(A) a shipper or other person that has made significant use (as determined by the Commission) of the railroad line involved in the proposed abandonment or discontinuance during the 12-month period before the filing of the application for a certificate; or

(B) a State or political subdivision of a State in which any part of the railroad line is located;

the Commission may issue a certificate under section 10903 of this title only if the railroad line has been described and identified in the diagram or amendment to the diagram of the rail carrier that was submitted to the Commission at least 4 months before the date on which the application was filed.

§ 10905. Offers of financial assistance to avoid abandonment and discontinuance

49 USC 10905.

(a) In this section—

(1) "avoidable cost" means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include—

"Avoidable cost."

(A) working capital and required capital expenditure;

(B) expenditures to eliminate deferred maintenance;

"Reasonable
return."

Publication in
Federal Register.

(C) the current cost of freight cars, locomotives, and other equipment; and

(D) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes.

(2) "reasonable return" means—

(A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Interstate Commerce Commission; and

(B) if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Commission.

(b) When the Commission finds under section 10903 of this title that the present or future public convenience and necessity require or permit abandonment or discontinuance, it shall publish the finding in the Federal Register. If, within 30 days after the publication, the Commission finds that—

(1) a financially responsible person (including a governmental authority) has offered financial assistance to enable the rail transportation to be continued over that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued; and

(2) it is likely that the assistance would be equal to—

(A) the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line; or

(B) the acquisition cost of that part of the railroad line; the Commission shall postpone the issuance of a certificate authorizing abandonment or discontinuance for a reasonable time, not to exceed 6 months, to enable the person or governmental authority to enter into an agreement with the rail carrier to provide the assistance or to buy that part of the railroad line and to continue to provide rail transportation over the line. Thereafter, the Commission shall determine the extent to which the avoidable cost of providing rail transportation plus a reasonable return on the rail properties involved exceed the revenues attributable to the railroad line or the rail transportation proposed to be abandoned or discontinued. On notice to the Commission that such an agreement has been executed, the Commission shall further postpone the issuance of the certificate as long as the agreement, or an extension or modification of the agreement, is in effect.

(c) The rail carrier shall provide promptly to a party considering offering financial assistance under subsection (b) of this section—

(1) its most recent reports on the physical condition of that part of the railroad line involved in the proposed abandonment or discontinuance; and

(2) traffic, revenue, and other data necessary to determine the amount of financial assistance that would be required to continue rail transportation over that part of the railroad line.

49 USC 10906.

§ 10906. Offering abandoned rail properties for sale for public purposes

When the Interstate Commerce Commission finds under section 10903 of this title that the present or future public convenience and necessity require or permit abandonment or discontinuance, the Commission shall find further whether the rail properties that are in-

volved in the proposed abandonment or discontinuance are suitable for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Commission finds that the rail properties proposed to be abandoned are suitable for public purposes, the properties may be sold, leased, exchanged, or otherwise disposed of only under conditions provided in the order of the Commission. The conditions may include a prohibition on any such disposal for a period of not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.

§ 10907. Exceptions

49 USC 10907.

(a) Notwithstanding sections 10901 and 10902 and subchapter III of chapter 113 of this title, and without the approval of the Interstate Commerce Commission, a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

Ante, p. 1359.

(b) The Commission does not have authority under sections 10901–10906 of this title over—

(1) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks if the tracks are located, or intended to be located, entirely in one State; or

(2) a street, suburban, or interurban electric railway that is not operated as part of a general system of rail transportation.

§ 10908. Discontinuing or changing interstate train or ferry transportation subject to State law

49 USC 10908.

(a) When a discontinuance or change in any part of the transportation of a train or ferry operating between a place in a State and a place in another State—

(1) is proposed by a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title; and

(2) is subject to the law of a State, or to a regulation or order of, or proceeding pending before, a court or other authority of a State;

the carrier, notwithstanding that law, regulation, order, or proceeding, may discontinue or change the transportation—

(A) if it files a notice of the proposed discontinuance or change with the Commission at least 30 days before the discontinuance or change is intended to be effective and carries out the discontinuance or change under that notice;

(B) if it mails a copy of the notice to the chief executive officer of each State in which the train or ferry is operated and posts a copy of the notice at each station, depot, or other facility served by the train or ferry; and

(C) except as otherwise provided by the Commission under this section.

(b) On petition or on its own initiative, the Commission may conduct a proceeding on the proposed discontinuance or change if it begins the proceeding between the date the carrier files the notice under subsection (a) of this section and the date on which the discontinuance or

change is intended to be effective. After the proceeding begins, the Commission may order the carrier proposing the discontinuance or change to continue any part of the transportation pending completion of the proceeding and the decision of the Commission if the Commission serves a copy of its order on the carrier at least 10 days before the date on which the carrier intended the discontinuance or change to be effective. However, the Commission may not order the transportation continued for more than 4 months after the date on which the carrier intended the discontinuance or change to be effective.

(c) If, after a proceeding completed either before or after the proposed discontinuance or change has become effective, the Commission finds that any part of the transportation is required or permitted by present or future public convenience and necessity and will not unreasonably burden interstate or foreign commerce, the Commission may order the carrier to continue or restore that transportation for not to exceed one year from the date of the Commission order. On expiration of the Commission order, the jurisdiction of each State involved in the discontinuance or change is no longer superseded except to the extent this section is again invoked.

49 USC 10909.

§ 10909. Discontinuing or changing train or ferry transportation in one State

Ante, p. 1359.

(a) When a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title has proposed a discontinuance or change of any part of the transportation of a train or ferry operated by it entirely in one State and—

(1) the law of the State prohibits the discontinuance or change;

(2) the carrier has requested the State authority having jurisdiction over the discontinuance or change for permission to discontinue or change the transportation and the request has been denied; or

(3) the State authority has not acted finally by the 120th day after the carrier made the request;

the carrier may petition the Commission for permission to discontinue or change the transportation.

Notification.

Hearing
opportunity.

(b) When a petition is filed under subsection (a) of this section, the Commission shall notify the chief executive officer of the State in which the train or ferry is operated concerning the petition. Before acting on the petition, the Commission shall give interested parties a full hearing. If such a hearing is requested, the Commission shall give all interested parties at least 30 days notice of the hearing and shall hold the hearing in the State in which the train or ferry is operated. The Commission may cooperate with, and use the services, records, and facilities of, the State in carrying out this section.

(c) The Commission may grant permission to the carrier to discontinue or change any part of the transportation if the Commission finds that—

(1) the present or future public convenience and necessity require or permit the discontinuance or change to be authorized by the Commission; and

(2) continuing the transportation, without the proposed discontinuance or change, will constitute an unreasonable burden on the interstate operations of the carrier or on interstate commerce.

SUBCHAPTER II—OTHER CARRIERS AND MOTOR CARRIER BROKERS

§ 10921. Requirement for certificate, permit, or license

49 USC 10921.

Except as provided in this subchapter or another law, a person may provide transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter II, III, or IV of chapter 105 of this title or be a broker for transportation subject to the jurisdiction of the Commission under subchapter II of that chapter, only if the person holds the appropriate certificate, permit, or license issued under this subchapter authorizing the transportation or service.

Ante, pp. 1361,
1365, 1369.

§ 10922. Certificates of motor and water common carriers

49 USC 10922.

(a) Except as provided in this section and section 10930(a) of this title, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title as a motor common carrier or water common carrier, respectively, if the Commission finds that—

(1) the person is fit, willing, and able—

(A) to provide the transportation to be authorized by the certificate; and

(B) to comply with this subtitle and regulations of the Commission; and

(2) the transportation to be provided under the certificate is or will be required by the present or future public convenience and necessity.

(b) A person must file an application with the Commission for a certificate to provide transportation as a motor common carrier or water common carrier. The Commission may approve any part of the application or deny the application. The application must—

Applications.

(1) be under oath;

(2) contain information required by Commission regulations; and

(3) be served on persons designated by the Commission.

(c)(1) Subject to section 10927(a) of this title, each certificate issued to a person to provide transportation as a motor common carrier shall specify—

(A) the transportation to be provided by the carrier;

(B) any of the regular routes over which, any of the places between which, and off-route places at which, the carrier may provide transportation; and

(C) if transportation is not over regular routes or between specified places, the area in which the carrier may provide transportation.

(2) Under regulations of the Commission, a motor common carrier may occasionally deviate from the regular routes, or the places specified in the certificate, or both.

(3) If a motor common carrier transports passengers, the Commission may authorize transportation of the passengers only over a regular route and between specified places, except to the extent the carrier is authorized to provide special or charter transportation.

(4) A certificate of a motor common carrier to transport passengers may include authority to transport—

(A) newspapers, baggage of passengers, express, or mail in the same motor vehicle with the passengers; and

(B) baggage of passengers in a separate motor vehicle.

(d) Each certificate issued to a person to provide transportation as a water common carrier shall specify each route over which, and each port between which, the carrier may provide transportation.

(e) (1) A motor common carrier may provide transportation under a certificate only if the carrier complies with conditions the Commission finds are required by public convenience and necessity, including conditions—

(A) on extending routes of the carrier; and

(B) to carry out requirements established by the Commission under this subtitle.

(2) The Commission may prescribe necessary conditions under which a water common carrier provides transportation, including conditions on extending routes of the carrier.

(3) The Commission may prescribe conditions when the certificate is issued and at any time thereafter. The Commission may not prescribe a condition preventing—

(A) a motor common carrier or water common carrier from adding to its equipment and facilities or its transportation within the scope of the certificate to satisfy business development and public demand; or

(B) a water common carrier, if the carrier has authority to provide transportation over completed parts of a waterway project authorized under law, from extending its transportation over the uncompleted parts of the project when opened for navigation to satisfy business development and public demand.

(f) A certificate issued under this section does not confer a proprietary or exclusive right to use the public highways or public waterways.

49 USC 10923.

§ 10923. Permits of motor and water contract carriers and freight forwarders

(a) Except as provided in this section and section 10930 of this title, the Interstate Commerce Commission shall issue a permit to a person authorizing the person to provide transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title as a motor contract carrier or water contract carrier, respectively, or to provide service subject to that jurisdiction under subchapter IV of chapter 105 as a freight forwarder, if the Commission finds that—

(1) the person is fit, willing, and able—

(A) to provide the transportation or service to be authorized by the permit; and

(B) to comply with this subtitle and regulations of the Commission; and

(2) the transportation or service to be provided under the permit is or will be consistent with the public interest and the transportation policy of section 10101 of this title.

(b) (1) A person must file an application with the Commission for a permit to provide transportation as a contract carrier or to provide service as a freight forwarder. The Commission may approve any part of the application or deny the application. The application must—

(A) be under oath;

Ante, pp. 1361, 1365.

Ante, p. 1369.

Ante, p. 1337.
Applications.

- (B) contain information required by Commission regulations; and
 - (C) be served on persons designated by the Commission.
- (2) In deciding whether to approve the application of a person for a permit as a motor contract carrier, the Commission shall consider—
- (A) the number of shippers to be served by the carrier;
 - (B) the nature of the transportation proposed to be provided;
 - (C) the effect that granting the permit would have on the transportation of carriers protesting the granting of the permit; and
 - (D) the effect that denying the permit would have on the person applying for the permit, its shippers, or both, and the changing character of the requirements of those shippers.
- (3) The Commission may not deny any part of an application for a freight forwarder permit filed by a corporation controlled by, or under common control with—
- (A) a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title, because of the relationship between the corporation and that carrier; and
 - (B) a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 only because the service to be provided by the corporation will compete with service provided by another freight forwarder subject to subchapter IV of that chapter.
- (c) Each permit issued to a person—
- (1) to provide transportation as a motor contract carrier is subject to section 10927(a) of this title and shall specify the transportation to be provided by the carrier;
 - (2) to provide transportation as a water contract carrier shall specify the transportation to be provided by the carrier; and
 - (3) to provide service as a freight forwarder shall specify the nature or general description about which the service is to be provided, the area in which, and the areas between which, the service may be provided by the freight forwarder.
- (d) (1) The Commission may prescribe necessary conditions under which a contract carrier or freight forwarder provides transportation or service. The Commission may prescribe the conditions when the permit is issued and at any time thereafter.
- (2) The permit for a motor contract carrier shall specify necessary conditions, including each person or number or class of persons for which the carrier may provide transportation—
- (A) to ensure that the carrier provides transportation as a motor contract carrier and within the scope of the permit; and
 - (B) to carry out requirements established by the Commission under this subtitle.
- (3) Subject to the permit and its conditions, a motor contract carrier may substitute or add to its equipment and facilities as requests for its transportation develop. The Commission may not prescribe a condition preventing—
- (A) a water contract carrier from substituting or adding contracts within the scope of the permit to satisfy the requirements of business development and public demand; and
 - (B) a water contract carrier or freight forwarder from adding to its equipment and facilities, and transportation or service, as

Ante, pp. 1359,
1361, 1365.

Ante, p. 1369.

the case may be, within the scope of the permit to satisfy the requirements of business development and public demand.

49 USC 10924.

§ 10924. Licenses of motor carrier brokers

Ante, p. 1361.

(a) The Interstate Commerce Commission shall issue, subject to section 10927(b) of this title, a license to a person authorizing the person to be a broker for transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, if the Commission finds that—

(1) the person is fit, willing, and able—

(A) to be a broker for transportation to be authorized by the license; and

(B) to comply with this subtitle and regulations of the Commission; and

Ante, p. 1337.

(2) the transportation for which the person is to be a broker will be consistent with the public interest and the transportation policy of section 10101 of this title.

(b) (1) The broker may provide the transportation itself only if the broker also has been issued a certificate or permit to provide the transportation under this subchapter. A broker may use only the transportation of a motor carrier holding a certificate or permit issued under this subchapter.

(2) This subsection does not apply to a motor carrier having a certificate or permit issued under this subchapter or to an employee or agent of the motor carrier to the extent the transportation is to be provided entirely by the motor carrier, with other motor carriers holding certificates or permits, or with rail, express, or water common carriers.

(c) A person must file an application with the Commission for a license to be a broker for motor carrier transportation. The Commission may approve the application or any part of it, or deny the application.

(d) Commission regulations shall provide for the protection of travelers and shippers by motor vehicle, to be observed by brokers.

49 USC 10925.

§ 10925. Effective periods of certificates, permits, and licenses

(a) Each certificate, permit, and license issued under section 10922, 10923, or 10924 of this title is effective from the date specified in it and remains in effect except as otherwise provided in this section.

(b) On application of the holder of a certificate, permit, or license, the Interstate Commerce Commission may amend or revoke any part of the certificate, permit, or license. On complaint or on its own initiative and after notice and an opportunity for a proceeding, the Commission may suspend, amend, or revoke any part of a certificate, permit, or license—

(1) if a motor carrier, broker, or freight forwarder, for willful failure to comply with this subtitle, a regulation or order of the Commission, or a condition of its certificate, permit, or license; and

Ante, p. 1371.

(2) if a water carrier, for willful failure to comply with section 10701(a) or 11101(a) of this title, a regulation or order of the Commission, or a condition of its certificate or permit.

Post, p. 1449.

(c) (1) Except on application of the holder, the Commission may revoke a certificate or permit of a motor carrier or freight forwarder, or a license of a broker, only after the Commission has issued an order to the holder under section 11701 of this title requiring compliance with this subtitle, a regulation of the Commission, or a condition of the

certificate, permit, or license of the holder, and the holder willfully does not comply with the order.

(2) Except on application of the holder, the Commission may suspend, amend, or revoke a certificate or permit of a water carrier only after the Commission has issued an order to the holder under section 11701 of this title requiring compliance with section 10701(a) or 11101(a) of this title, and the holder willfully does not comply with the order.

Post, p. 1449.

Ante, p. 1371.

(3) The Commission may act under paragraph (1) or (2) of this subsection only after giving the holder of the certificate, permit, or license at least 30 days to comply with the order.

(d) (1) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Commission may suspend a certificate of a motor carrier, a permit of a freight forwarder, or a license of a broker—

Ante, p. 1345.

5 USC 551.

(A) if a motor carrier or broker, for failure to comply with section 10701, 10702, 10761, 10762, 10924(d), or 10927 (b) or (d) of this title, or an order or regulation of the Commission prescribed under those sections; and

Ante, pp. 1371, 1372, 1394.

(B) if a freight forwarder, for failure to comply with section 10762 or 10927 (c) or (d) of this title, or an order or regulation of the Commission prescribed under those sections.

(2) The Commission may suspend the certificate, permit, or license only after it gives notice of the suspension to the holder at least 15 days before the date the suspension is to begin. The suspension remains in effect until the holder complies with those applicable sections.

§ 10926. Transfers of certificates and permits

49 USC 10926.

Except as provided in this subtitle, a certificate or permit issued under section 10922 or 10923 of this title—

(1) if a certificate or permit of a motor carrier, may be transferred under regulations of the Interstate Commerce Commission;

(2) if a certificate or permit of a water carrier, may be transferred under regulations prescribed by the Commission to protect the public interest and to ensure compliance with this subtitle; and

(3) if a permit of a freight forwarder, may be transferred under regulations prescribed by the Commission to ensure compliance with this subtitle, if the Commission finds that the person to whom the permit is to be transferred satisfies section 10923 (a) and (b) of this title. However, if the proposed transfer would affect the interests of employees of a freight forwarder, the Commission shall require a fair and equitable arrangement to protect the interests of those employees before the transfer is effective.

§ 10927. Security of motor carriers, brokers, and freight forwarders

49 USC 10927.

(a) (1) The Interstate Commerce Commission may issue a certificate or permit to a motor carrier under section 10922 or 10923 of this title only if the carrier files with the Commission a bond, insurance policy, or other type of security approved by the Commission. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the carrier for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles under the certificate or permit, or for loss or damage to property (except property referred to in

paragraph (3) of this subsection), or both. A certificate or permit remains in effect only as long as the carrier satisfies the requirements of this paragraph.

Ante, pp. 1351,
1352.

(2) A motor carrier operating in the United States when providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country shall comply with the requirements of sections 10329 and 10330 that apply to a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title. To protect the public, the Commission may require any such motor carrier to file the type of security that a motor carrier is required to file under paragraph (1) of this subsection.

(3) The Commission may require a motor common carrier providing transportation under a certificate to file with the Commission a type of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor common carrier as the result of transportation provided under this subtitle. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor common carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

(b) The Commission may issue a broker's license to a person under section 10924 of this title only if the person files with the Commission a bond, insurance policy, or other type of security approved by the Commission to ensure that the transportation for which a broker arranges is provided. The license remains in effect only as long as the broker complies with this subsection.

(c)(1) The Commission may require a freight forwarder providing service under a permit issued under section 10923 of this title to file with the Commission a bond, insurance policy, or other type of security approved by the Commission. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the freight forwarder for bodily injury to, or death of, an individual, or loss of, or damage to, property (other than property referred to in paragraph (2) of this subsection), resulting from the negligent operation, maintenance, or use of motor vehicles by or under the direction and control of the freight forwarder when providing transfer, collection, or delivery service under this subtitle.

(2) The Commission may require a freight forwarder providing service under a permit to file with the Commission a bond, insurance policy, or other type of security approved by the Commission sufficient to pay, not more than the amount of the security, for loss of, or damage to, property for which the freight forwarder provides service under this subtitle.

(d) The Commission may determine the type and amount of security filed with it under this section.

49 USC 10928.

§ 10928. Temporary authority for motor and water carriers

5 USC 551.

Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Interstate Commerce Commission may grant a motor carrier or water carrier temporary authority to provide transportation to a place or in an area having, respectively, no motor carrier or water carrier capable of meeting the immediate needs of the place or area. Unless suspended or revoked, the Commission may grant the temporary authority for not more than 180 days. A grant of temporary authority does not establish a pre-

sumption that permanent authority to provide transportation will be granted under this subchapter.

§ 10929. Temporary authority for previously exempt water transportation 49 USC 10929.

When transportation exempt from the jurisdiction of the Interstate Commerce Commission under section 10544(a)-(c) of this title becomes subject to the jurisdiction of the Commission, the water carrier may continue to provide the transportation without a certificate or permit issued under this subchapter for a period of 120 days beginning on the day the transportation becomes subject to the jurisdiction of the Commission. If the carrier applies to the Commission within that period for a certificate or permit to provide the transportation previously exempt, the Commission shall issue to the carrier the appropriate certificate or permit authorizing the transportation. The Commission shall issue each such certificate and permit without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

Ante, p. 1368.

Ante, p. 1345.
5 USC 551.

49 USC 10930.

§ 10930. Limitations on certificates and permits

(a) Except when the Interstate Commerce Commission finds good cause consistent with the public interest and the transportation policy of section 10101 of this title—

Ante, p. 1337.

(1) a person may not hold both a certificate of a motor common carrier and a permit of a motor contract carrier issued under this subchapter, or both a certificate of a water common carrier and a permit of a water contract carrier issued under this subchapter, to transport property over the same route or in the same area; and

(2) if a person controls, is controlled by, or is under common control with, another person—

(A) one of them may not hold a certificate of a motor common carrier, while the other holds a permit of a motor contract carrier, to transport property over the same route or in the same area; and

(B) one of them may not hold a certificate of a water common carrier, while the other holds a permit of a water contract carrier, to transport property over the same route or in the same area.

(b) (1) A person may not hold a permit of a freight forwarder issued under this subchapter if the person is a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title.

Ante, pp. 1359,
1361, 1365.

(2) Except for motor vehicle transportation subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title by section 10523(a)(2) of this title, a permit may not authorize a freight forwarder to conduct direct rail, water, or motor carrier transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter.

Ante, p. 1369.
Ante, p. 1362.

(3) Except when the Commission finds that service to be provided as a freight forwarder is consistent with the public interest and the transportation policy of section 10101 of this title, a person may not hold a permit of a freight forwarder when—

(A) the principal business of the person is manufacturing and selling, or buying and selling, or both manufacturing and selling and buying and selling articles or commodities, and the service

of a freight forwarder (or similar assembling, consolidating, and shipping service is provided by the person for its own business) is commonly used to transport the articles or commodities; or

(B) the person controls, is controlled by, or is under common control with, a person referred to in clause (A) of this paragraph.

49 USC 10931.

§ 10931. Motor common carriers providing transportation entirely in one State

Ante, p. 1361.

(a) A motor common carrier may provide transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title without a certificate issued by the Commission under section 10922 of this title, when—

(1) the carrier provides transportation entirely in one State;

(2) the carrier is not controlled by, controlling, or under common control with a carrier providing transportation outside the State;

(3) the carrier has applied for, and has been issued, a certificate of public convenience and necessity by the State authority having jurisdiction to issue such a certificate, permitting the carrier to provide intrastate transportation by motor vehicle; and

(4) the intrastate certificate was issued after, and the certificate states that—

Publication in
Federal Register.

(A) notice was given to interested parties through publication in the Federal Register of the filing of the application by the carrier and the desire of the carrier to provide transportation otherwise under the jurisdiction of the Commission within the limits of the certificate issued by the State authority;

(B) reasonable opportunity to be heard was given; and

(C) the State authority considered and found that the public convenience and necessity require that the carrier be permitted to provide transportation under the jurisdiction of the Commission within limits that do not exceed the scope of the certificate issued by the State authority.

Petitions.

(b) An interested party that opposed issuing the certificate to a motor common carrier in a proceeding before a State authority may petition the Commission for reconsideration of a decision of the State authority. On reconsideration, the Commission, based on the record before the State authority, may affirm, reverse, or change that decision, but only with respect to the transportation subject to Commission jurisdiction.

(c) The Commission may require, before a motor common carrier provides transportation authorized under this section, that—

(1) a certified copy of the carrier's intrastate certificate and other appropriate information be filed with the Commission; and

(2) the carrier comply with applicable requirements established by the Commission.

Certificates of
registration.

(d) (1) The Commission shall issue a certificate of registration to a motor common carrier authorizing the carrier to provide transportation under this section. The authority granted under the certificate is subject to all other applicable provisions of this subtitle. Except as otherwise provided in this subsection and subchapter III of chapter 113 of this title, the certificate of registration may be transferred if it is transferred with the intrastate certificate. Transfer of the intrastate certificate without the certificate of registration revokes the certificate of registration.

(2) The certificate of registration issued by the Commission is valid as long as the motor common carrier provides transportation entirely in the State from which it received its intrastate certificate and is not controlled by, controlling, or under common control with, a carrier providing transportation outside the State.

(e) (1) On the 180th day after the termination, restriction in scope, or suspension of the intrastate certificate, the authority granted under this section to provide transportation is revoked or likewise restricted unless the intrastate certificate is renewed or reissued or the restriction is removed by that 180th day.

(2) Transportation authorized under this section may be suspended or revoked by the Commission under section 10925 of this title.

§ 10932. Motor carrier savings provisions

49 USC 10932.

(a) Except as specifically provided in a certificate or permit, the holder of a motor carrier certificate or permit issued as the result of an application filed before September 2, 1950, authorizing the carrier to provide transportation in the United States or between the United States and a foreign country (to the extent the transportation is in the United States), may provide the transportation between a place in the United States and a place in a territory or possession of the United States—

(1) without being authorized to do so by the Interstate Commerce Commission; and

(2) to the same extent and subject to the same conditions of the certificate or permit of the carrier.

(b) (1) A motor common carrier providing transportation under an intrastate certificate issued by a State and under a certificate of registration issued by the Commission under section 206(a) (7) of the Interstate Commerce Act (76 Stat. 912) that has been in effect since October 15, 1962, may continue to provide transportation otherwise subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title—

Post, p. 1466.

Ante, p. 1361.

(A) if the certificate of the State authorizing intrastate transportation is limited to a specified period of time, only for that period;

(B) subject to all other applicable provisions of this subtitle;

(C) as long as the carrier provides transportation only in the State issuing the intrastate certificate; and

(D) as long as the carrier is not controlled by, controlling, or under common control with, a carrier providing transportation outside the State.

(2) Except as provided in subchapter III of chapter 113 of this title, the certificate of registration issued by the Commission may be transferred if it is transferred with the intrastate certificate. Transfer of the intrastate certificate without the certificate of registration revokes the certificate of registration.

(3) On the 180th day after the termination, restriction in scope, or suspension of the intrastate certificate, the authority granted under the certificate of registration is revoked or likewise restricted unless the intrastate certificate is renewed or reissued or the restriction is removed by that 180th day. The certificate of registration may be suspended or revoked by the Commission under section 10925 of this title.

(c) Under regulations of the Commission, a motor common carrier transporting passengers under a certificate issued by the Commission

as the result of an application filed before January 2, 1967, or under a reissuance of the operating authority provided in the certificate, may provide transportation to any place subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title for special and chartered parties.

(d) The Commission may not prescribe a condition for a motor contract carrier permit issued before August 23, 1957, that restricts the authority of the carrier—

(1) to substitute similar contracts within the scope of the permit; or

(2) to add contracts within the scope of the permit, unless the Commission, on its own initiative or on petition of an interested carrier, finds that the scope of the transportation to be provided by the motor contract carrier under any such additional contract is not confined to transportation provided by a motor contract carrier as defined after August 21, 1957.

49 USC 10933.

§ 10933. Authorizing abandonment of freight forwarder service

When a freight forwarder is controlled by, or under common control with, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title, the freight forwarder may abandon any part of the service it provides subject to the jurisdiction of the Commission under subchapter IV of chapter 105, only if the Commission finds the abandonment is consistent with the public interest and the transportation policy of section 10101 of this title. On making the finding, the Commission shall issue to the freight forwarder a certificate describing the abandonment authorized by the Commission.

Ante, pp. 1359, 1361, 1365.

Ante, p. 1369.

Ante, p. 1337.

CHAPTER 111—OPERATIONS OF CARRIERS

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SUBCHAPTER I—GENERAL REQUIREMENTS

§ 11101. Providing transportation and service

49 USC 11101.

(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide the transportation or service on reasonable request. In addition, a motor common carrier shall provide safe and adequate service, equipment, and facilities.

Ante, p. 1358.

(b) The Commission may prescribe requirements for continuous and adequate transportation and service provided by motor common carriers and freight forwarders subject to the jurisdiction of the Commission under subchapters II and IV of chapter 105 of this title and for transportation of baggage and express by such motor common carriers of passengers.

Ante, pp. 1361, 1369.

(c) The Commission may not regulate the duration of, or the amount of compensation payable under, an arrangement between a motor carrier and another party to use, with a driver, a motor vehicle not owned by that carrier to transport property when—

(1) the motor vehicle—

(A) to be used is that of a farmer or a cooperative association or a federation of cooperative associations under section 10526(a) (4) or (5) of this title or a motor private carrier;

Ante, p. 1364.

(B) is used regularly in the transportation of (i) property referred to in section 10526(a) (6) of this title, or (ii) perishable products manufactured from perishable property referred to in that section; and

(C) is to be used by the carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area where the motor vehicle is based; or

(2) the motor vehicle to be used has completed a movement exempt under section 10526(a) (6) of this title and is next to be used by that carrier in a loaded movement in any direction or in a movement referred to in clause (1) (C) of this subsection, or both.

§ 11102. Classification of carriers

49 USC 11102.

The Interstate Commerce Commission may classify and maintain requirements for groups of carriers included in the terms "motor common carrier", "water common carrier", "motor contract carrier", or "water contract carrier" and for brokers, when required because of the special nature of the transportation provided by them.

§ 11103. Use of terminal facilities

49 USC 11103.

(a) The Interstate Commerce Commission may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, to be used by another rail carrier if the Commission finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the carriers cannot agree, the

Ante, p. 1359.

Commission may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a carrier may begin to use the facilities of another carrier under this section.

(b) A rail carrier whose terminal facilities are required to be used by another carrier under this section is entitled to recover damages from the other carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both, as appropriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.

49 USC 11104.

§ 11104. Switch connections and tracks

(a) On application of the owner of a lateral branch line of railroad, or of a shipper tendering interstate traffic for transportation, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall construct, maintain, and operate, on reasonable conditions, a switch connection to connect that branch line or private side track with its railroad and shall furnish cars to move that traffic to the best of its ability without discrimination in favor of or against the shipper when the connection—

- (1) is reasonably practicable;
- (2) can be made safely; and
- (3) will furnish sufficient business to justify its construction and maintenance.

Filing of
complaints.

(b) If a common carrier fails to install and operate a switch connection after application is made under subsection (a) of this section, the owner of the lateral branch line of railroad or the shipper may file a complaint with the Commission under section 11701 of this title. The Commission shall investigate the complaint and decide the safety, practicability, justification, and compensation to be paid for the connection. The Commission may direct the common carrier to comply with subsection (a) of this section only after a full hearing.

Post, p. 1449

Hearing.

49 USC 11105.

§ 11105. Protective services

A rail or express carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may arrange for a person to furnish to or for the carrier a protective service against heat or cold for property transported by it subject to that jurisdiction only when the Commission finds the arrangement to be reasonable and in the public interest.

49 USC 11106.

§ 11106. Identification of motor vehicles

(a) The Interstate Commerce Commission may—

- (1) issue and require the display of an identification plate on a motor vehicle used in transportation subject to its jurisdiction under subchapter II of chapter 105 of this title; and

Ante, p. 1361.

- (2) require the carrier to pay the reasonable cost of the plate.
- (b) A carrier may use an identification plate only as authorized by the Commission.

49 USC 11107.

§ 11107. Leased motor vehicles

Except as provided in section 11101(c) of this title, the Interstate Commerce Commission may require a motor carrier providing transportation subject to the jurisdiction of the Commission under sub-

chapter II of chapter 105 of this title that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

(1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;

(2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;

(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary of Transportation on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

§ 11108. Water carriers subject to unreasonable discrimination in foreign transportation 49 USC 11108.

(a) The Interstate Commerce Commission may relieve a water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, from the requirements of this subtitle when a rate, rule, or practice established by a person providing water transportation to or from a port in a foreign country in competition with that carrier unreasonably discriminates against that carrier. The Commission may relieve that carrier to the extent and for the period of time necessary to end or ease the discrimination if the relief is in the public interest and consistent with the transportation policy of section 10101 of this title. *Ante*, p. 1365.

(b) The Commission may begin a proceeding under this section on its own initiative or on application. *Ante*, p. 1337. Proceedings.

SUBCHAPTER II—CAR SERVICE

§ 11121. Criteria 49 USC 11121.

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Commission may— *Ante*, p. 1359.

(1) require a rail carrier to file its car service rules with the Commission; and

(2) require that carrier to incorporate those rules in its tariffs.

(b) The Commission may designate and appoint agents and agencies to make and carry out its directions related to car service and matters under sections 11123–11125, 11127, and 11128(a) (1) of this title.

§ 11122. Compensation and practice 49 USC 11122.

(a) The regulations of the Interstate Commerce Commission on car service shall encourage the purchase, acquisition, and efficient use of freight cars. The regulations may include— Regulations.

(1) the compensation to be paid for the use of a locomotive, freight car, or other vehicle;

(2) the other terms of any arrangement for the use by a rail carrier of a locomotive, freight car, or other vehicle not owned by the rail carrier using the locomotive, freight car, or other vehicle, whether or not owned by another carrier, shipper, or third person; and

(3) sanctions for nonobservance.

(b) (1) The rate of compensation to be paid for each type of freight car shall be determined by the expense of owning and maintaining that type of freight car, including a fair return on its cost giving consideration to current costs of capital, repairs, materials, parts, and labor. In determining the rate of compensation, the Commission shall consider the transportation use of each type of freight car, the national level of ownership of each type of freight car, and other factors that affect the adequacy of the national freight car supply.

(2) The Commission may increase a rate of compensation determined under paragraph (1) of this subsection by an incentive element only when the Commission finds that the supply of a type of freight car is inadequate and an incentive element will compensate freight car owners, contribute to sound car service practices (including efficient utilization and distribution of cars), and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and national defense. The Commission may exempt that incentive element from the compensation to be paid by a carrier or group of carriers when the Commission finds that exemption is in the national interest.

49 USC 11123.

§ 11123. Situations requiring immediate action

(a) When the Interstate Commerce Commission considers that a shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in a section of the United States, the Commission may—

(1) suspend any car service rule or practice;

(2) take action during the emergency to promote service in the interest of the public and of commerce regardless of the ownership (as between carriers) of a locomotive, car, or other vehicle on terms of compensation the carriers establish between themselves subject to subsection (b) (2) of this section;

(3) require joint or common use of terminals, including main-line tracks for a reasonable distance outside of those terminals, on terms of compensation the carriers establish between themselves, subject to subsection (b) (2) of this section, when that action will best meet the emergency and serve the public interest; and

(4) give directions for preference or priority in transportation, embargoes, or movement of traffic under permits.

(b) (1) Except as provided in paragraph (2) of this subsection, the Commission may act under this section on its own initiative or on application without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

(2) When the carriers do not agree on terms of compensation under subsection (a) (2) of this section or on terms for joint or common use of terminals under subsection (a) (3) of this section, the Commission may establish for them in a later proceeding terms of compensation the Commission finds to be reasonable.

Ante, p. 1345.
5 USC 551.

49 USC 11124.

§ 11124. Rerouting traffic on failure of rail carrier to serve the public

(a) When the Interstate Commerce Commission considers that a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title cannot transport the traffic offered to it in a manner that properly serves the public, the Commission may direct the handling, routing, and movement of the traffic of that carrier and its distribution over other rail-

Ante, p. 1359.

road lines to promote commerce and service to the public. Subject to subsection (b) (2) of this section, the carriers may establish the terms of compensation between themselves.

(b) (1) Except as provided in paragraph (2) of this subsection, the Commission may act under this section on its own initiative or on application without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

Ante, p. 1345.

5 USC 551 *et seq.*

(2) When the carriers do not agree on the terms of compensation under this section, the Commission may establish the terms for them in a later proceeding.

§ 11125. Directed rail transportation

49 USC 11125.

(a) When a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title cannot transport the traffic offered to it because—

Ante, p. 1359.

(1) its cash position makes its continuing operation impossible;

(2) transportation has been discontinued under court order; or

(3) it has discontinued transportation without obtaining a required certificate under section 10903 of this title;

the Commission may direct the handling, routing, and movement of the traffic available to that carrier and its distribution over the railroad lines of that carrier by another carrier to promote service in the interest of the public and of commerce. Subject to subsection (b) of this section, the Commission may act without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

(b) (1) Action of the Commission under subsection (a) of this section may not remain in effect for more than 60 days. However, the Commission may extend that period for an additional designated period of not more than 180 days if cause exists.

(2) The Commission may not take action that would—

(A) cause a directed carrier to operate in violation of section 421 of title 45; or

45 USC 421.

(B) impair substantially the ability of a directed carrier to serve its own patrons adequately, or to meet its outstanding common carrier obligations.

(3) A directed carrier is not responsible, because of the direction of the Commission, for the debts of the other carrier.

Debts.

(4) A directed carrier shall hire the employees of the other carrier, to the extent that they previously provided that transportation for the other carrier, and assume the existing employment obligations and practices of the other carrier for those employees including agreements governing rate of pay, rules and working conditions, and employee protective conditions for the period during which the action of the Commission is effective.

(5) A directed carrier may apply to the Commission for payment of an amount equal to the amount by which (A) the total expenses of that carrier incurred in or attributable to the handling, routing, and moving the traffic over the lines of the other carrier for the period during which the action of the Commission is effective, including renting or leasing necessary equipment and an allocation of common expenses, overhead, and a reasonable profit, exceed (B) the direct revenues from handling, routing, and moving that traffic over the lines of the other carrier during that period. The carrier must submit a current record of those total expenses to the Commission. The Commission shall certify promptly, to the Secretary of the Treasury, the amount to be paid. The Secretary shall pay that amount by the 90th

Audit.

49 USC 11126.

Ante, p. 1359.

Ante, pp. 1338,

1359, 1371,

1372, 1380,

1383-1386,

1390, 1391,

1393, 1394,

1402, 1403, *Post*,

pp. 1444, 1448,

1450, 1455,

1457, 1459,

1464. "Unit train
Service."

49 USC 11127.

day after the end of the period during which the direction of the Commission is effective, and funds are authorized to be appropriated for that payment. The Commission may audit any such record.

§ 11126. Distribution of coal cars

(a) Subject to subsection (b) of this section, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall make a reasonable distribution of cars for transportation of coal among the coal mines served by it whether the mines are located on its line or are customarily dependent on it for car supply. If the supply of available cars does not equal the requirements of the mines, the carrier shall maintain and apply reasonable ratings of the mines and count each car furnished to or used by a mine for transportation of coal against that mine. However, coal cars supplied by shippers or receivers are deemed not to be a part of the carrier's fleet and are not counted in determining a question about distribution or car count under subsection (b) of this section or section 10102, 10501, 10701-10703, 10707, 10721(b), 10722(c)-(d), 10723(a)-(b)(1), 10724(a), 10741-10744, 10746, 10749, 10750, 10901, 10902, 10907, 11101, 11103-11105, 11121-11125, 11127, 11128(a)(1), 11501(c), 11505(a), 11702(a)(1), 11703, 11901(d)-(e)(2), 11902, 11903, 11905, 11907, 11915, or 11916 of this title.

(b)(1) In this subsection, "unit-train service" means the movement of a single shipment of coal of at least 4,500 tons, tendered to one carrier, on one bill of lading, at one origin, on one day, and destined to one consignee, at one plant, at one destination, over one route.

(2) Unit-train service and non-unit-train service are deemed to be separate and distinct classes of service. A distinction shall be made between them and between the cars used in each class of service. A question about the reasonableness of, or discrimination in, the distribution of cars shall be determined within each class and not between them, notwithstanding a section referred to in subsection (a) of this section.

§ 11127. Service of freight forwarders

(a)(1) When the Interstate Commerce Commission considers that a shortage of equipment, congestion of traffic, or other emergency requires immediate action at a place in the United States, the Commission may—

(A) suspend any service, equipment, or facilities requirement applicable to a freight forwarder under the jurisdiction of the Commission under subchapter IV of chapter 105 of this title;

(B) take action to promote transportation in the interest of the public and of commerce; and

(C) give directions for preference or priority in transportation, embargoes, or movement of traffic under permits.

(2) When the Commission considers that any such freight forwarder cannot properly serve the public by providing service for the traffic offered it, the Commission may require the handling, routing, and movement of that traffic in another manner to promote commerce and service to the public. When the equipment or facilities of another freight forwarder are required to be used, the freight forwarders may establish terms of compensation between themselves subject to subsection (b)(2) of this section.

(b)(1) Except as provided in paragraph (2) of this subsection, the Commission may act under this section on its own initiative or on

application without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5.

Ante, p. 1345.

Ante, p. 1361.

(2) When the freight forwarders do not agree on the terms of compensation under this section, the Commission may establish the terms for them in a later proceeding.

§ 11128. War emergencies; embargoes imposed by carriers

49 USC 11128.

(a) (1) When the President, during time of war or threatened war, certifies to the Interstate Commerce Commission that it is essential to the defense and security of the United States to give preference or priority to the movement of certain traffic, the Commission shall direct that preference or priority be given to that traffic under sections 11123 (a) (4) and 11127 (a) (1) (C) of this title.

(2) When the President, during time of war or threatened war, demands that preference and precedence be given to the transportation of troops and material of war over all other traffic, all carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall adopt every means within their control to facilitate and expedite the military traffic.

Ante, p. 1359.

(b) An embargo imposed by any such carrier does not apply to shipments consigned to agents of the United States Government for its use. The carrier shall deliver those shipments as promptly as possible.

SUBCHAPTER III—REPORTS AND RECORDS

§ 11141. Definitions

49 USC 11141.

In this subchapter—

(1) “carrier”, “broker”, and “lessor” include a receiver or trustee of a carrier (except a freight forwarder), broker, and lessor, respectively.

(2) “lessor” means a person owning a railroad, water line, or a pipeline that is leased to and operated by a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, and a person leasing a right to operate as a motor carrier or water carrier to another.

(3) “association” means an organization maintained—

(A) by or in the interest of a group of carriers (except water carriers) or brokers providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title that performs a service, or engages in activities, related to transportation under this subtitle; or

Ante, p. 1358.

(B) only by water carriers providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title that engages in activities related to the fixing of rates, publication of classifications, or filing of tariffs by water carriers.

Ante, p. 1365.

§ 11142. Uniform accounting systems

49 USC 11142.

(a) The Interstate Commerce Commission shall prescribe, for rail carriers providing transportation subject to this subtitle, a uniform cost and revenue accounting and reporting system (1) under generally accepted accounting principles uniformly applied to those carriers and (2) after consideration of appropriate economic principles. To the extent possible, the system shall be cost effective, without duplication, and compatible with the present and desired managerial and responsi-

bility accounting requirements of those carriers. The Commission may prescribe a uniform accounting system for classes of carriers providing, and brokers for, transportation subject to the jurisdiction of the Commission under subchapters II, III, and IV of chapter 105 of this title.

Ante, pp. 1361, 1365, 1369.

(b) (1) To obtain the most accurate cost and revenue information about light density railroad lines, main line operations, factors used to establish rates, and other regulatory areas of responsibility, the Commission shall identify and define, for each facet of rail transportation—

(A) operating and nonoperating revenue accounts;
(B) direct cost accounts for determining fixed and variable costs for materials, labor, and overhead components of operating expenses and the assignment of those costs to various functions, services, or activities, including maintenance-of-way, maintenance of equipment (locomotive and car), transportation (train, yard and station, and accessorial services), and general and administrative expenses; and

(C) indirect cost accounts for determining fixed, common, joint, and constant costs, including the cost of capital, and the method for the assignment of those costs to various functions, services, or activities.

(2) Reports required under the rail accounting system must include information considered appropriate for disclosure under generally accepted accounting principles or the requirements of the Commission or of the Securities and Exchange Commission. To the extent possible, the Interstate Commerce Commission should require that information be reported or disclosed only for essential regulatory purposes including rate change requests, abandonment of facilities requests, responsibility for peaks in demand, cost of service, and issuance of securities.

Review.

(3) The Commission shall review the rail accounting system periodically, but at least once every 5th year after 1977, and revise the system as necessary to conform it to generally accepted accounting principles compatible with the managerial and responsibility accounting requirements of those carriers and to keep it in compliance with this section.

49 USC 11143.

§ 11143. Depreciation charges

The Interstate Commerce Commission shall, for a class of carriers providing transportation subject to its jurisdiction under subchapter I or III of chapter 105 of this title, and may, for a class of carriers providing transportation subject to its jurisdiction under subchapter II of that chapter, prescribe, and change when necessary, those classes of property for which depreciation charges may be included under operating expenses and a rate of depreciation that may be charged to a class of property. The Commission may classify those carriers for purposes of this section. A carrier for whom depreciation charges and rates of depreciation are in effect under this section for any class of property may not—

Ante, p. 1359.

(1) charge to operating expenses a depreciation charge on a class of property other than that prescribed by the Commission;
(2) charge another rate of depreciation; or
(3) include other depreciation charges in operating expenses.

49 USC 11144.

§ 11144. Records: form; inspection; preservation

(a) The Interstate Commerce Commission may prescribe the form

of records required to be prepared or compiled under this subchapter—

(1) by carriers, brokers, and lessors, including records related to movement of traffic and receipts and expenditures of money; and

(2) by persons furnishing cars or protective service against heat or cold to or for a rail or express carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to the extent related to those cars or that service.

Ante, p. 1359.

(b) The Commission, or an employee designated by the Commission, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a carrier, broker, or lessor; and

(2) inspect and copy any record of—

(A) a carrier, broker, lessor, or association;

(B) a person controlling, controlled by, or under common control with a carrier if the Commission considers inspection relevant to that person's relation to, or transaction with, that carrier; and

(C) a person furnishing cars or protective service against heat or cold to or for a rail or express carrier if the Commission prescribed the form of that record.

(c) The Commission, or an employee designated by the Commission, may, during normal business hours, inspect and copy any record related to motor vehicle transportation of a cooperative association or federation of cooperative associations required to notify the Commission under section 10526(a)(5) of this title. However, the Commission may not prescribe the form of records to be maintained by a cooperative association or federation of cooperative associations.

Ante, p. 1364.

(d) The Commission may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers, brokers, lessors, and persons furnishing cars or protective services.

§ 11145. Reports by carriers, lessors, and associations

49 USC 11145.

(a) The Interstate Commerce Commission may require—

(1) carriers, brokers, lessors, and associations, or classes of them as the Commission may prescribe, to file annual, periodic, and special reports with the Commission containing answers to questions asked by it; and

(2) a person furnishing cars or protective services against heat or cold to a rail or express carrier providing transportation subject to this subtitle, to file reports with the Commission containing answers to questions about those cars or services.

(b) (1) An annual report shall contain an account, in as much detail as the Commission may require, of the affairs of the carrier, broker, lessor, or association for the 12-month period ending on the 31st day of December of each year. However, when an annual report is made by a motor carrier, a broker, or a lessor or an association maintained by or interested in one of them, the person making the report may elect to make it for the 13-month period accounting year ending at the close of one of the last 7 days of each calendar year if the books of the person making the report are kept by that person on the basis of that accounting year.

Annual report.

(2) An annual report shall be filed with the Commission by the end of the 3d month after the end of the year for which the report is made unless the Commission extends the filing date or changes the period covered by the report. The annual report and, if the Commission requires, any other report made under this section, shall be made under oath.

CHAPTER 113—FINANCE

SUBCHAPTER I—CARRIER SECURITIES, EQUIPMENT TRUSTS, AND SECURITY INTERESTS

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SUBCHAPTER I—CARRIER SECURITIES, EQUIPMENT TRUSTS, AND SECURITY INTERESTS

49 USC 11301. **§ 11301. Authority of certain carriers to issue securities and assume obligations and liabilities**

(a) In this section—

“Carrier.”

Ante, p. 1359.

(1) “carrier” means a rail or sleeping car carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title

(except a street, suburban, or interurban electric railway not operated as a part of a general railroad system of transportation), and a corporation organized to provide transportation by rail carrier subject to that subchapter.

(2) "security" means a share of capital stock, a bond, or other evidence of interest in, or indebtedness of, a carrier.

(b) (1) Subject to subchapter I of chapter 2A, chapter 2B, and subchapter I of chapter 2D of title 15, the Commission has exclusive jurisdiction to approve the issuance of securities by a carrier and the assumption of an obligation or liability related to the securities of another person by a carrier. A carrier may not issue securities or assume those obligations or liabilities without the approval of the Commission. No other approval is required. A security issued or obligation or liability assumed by a carrier in violation of this subsection or in violation of a condition prescribed by the Commission under subsection (d) of this section is void. However, a security or obligation issued or assumed under authority of this section is not void for failure to comply with a procedural requirement of this section or other matter preceding entry of the order of the Commission.

(2) Paragraph (1) of this subsection does not apply to notes issued by a carrier if the notes mature not more than 2 years after their date of issue and total (with all then outstanding notes having a maturity of not more than 2 years) not more than 5 percent of the par value of the then outstanding securities of that carrier. If the securities do not have a par value, the par value of those securities is the fair market value on the date of issue. Paragraph (1) of this subsection applies to a subsequent funding of notes referred to in this paragraph.

(c) (1) A carrier issuing notes referred to in subsection (b) (2) of this section shall file a certificate of notification with the Commission by the end of the 10th day after they are issued. That notification must include substantially the same matter required by the Commission for an application for authority to issue other securities.

(2) A carrier that pledges, repledges, or otherwise disposes of a security referred to in an application for authority or a certificate of notification under this section as pledged or held unencumbered in the treasury of that carrier shall file a certificate of notification with the Commission by the end of the 10th day after it disposes of the security.

(d) (1) The Commission may begin a proceeding under this section on application of a carrier. Before taking final action, the Commission must investigate the purpose and use of the securities issue or assumption and the proceeds from it. The Commission may approve any part of the application and may require the carrier to comply with appropriate conditions. After an application is approved under this section, the Commission may change a condition previously imposed or use that may be made of the securities or proceeds for good cause shown subject to the requirements of this section. The Commission may approve an application under this section only when it finds that the securities issue or assumption—

(A) is for a lawful object within the corporate purpose of the carrier and reasonably appropriate for that purpose;

(B) is compatible with the public interest;

(C) is appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier; and

"Security."

Issuance of securities.
15 USC 77a, 78a, 80a-1.

Proceedings.

(D) will not impair the financial ability of the carrier to provide the service.

(2) An application or certificate must be made under oath and signed and filed for the carrier by a designated executive officer who knows the matters stated in the application or certificate. On receipt of an application of a carrier under this section, the Commission shall have a copy of the application served on the chief executive officer of each State in which that carrier operates. The appropriate authorities of those States are entitled to be admitted as parties to a proceeding under this section to represent the rights and interests of their people and States.

Reports to
Interstate
Commerce
Commission.

(e) The Commission shall require a carrier that issues securities, including notes, under this section to submit reports to it. The reports must identify the disposition of those securities and the application of the proceeds from their disposition.

(f) This section does not imply a guaranty or obligation of those securities by the United States Government. This section does not apply to securities issued or obligations or liabilities assumed by the United States Government, a State, or an instrumentality or political subdivision of one of them.

49 USC 11302.

§ 11302. Issuance of securities and assumption of obligations and liabilities by motor carriers

(a) Except as provided in this section, section 11301 of this title applies to—

Ante, p. 1361.

(1) motor carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title;

(2) corporations organized to provide transportation as carriers subject to the jurisdiction of the Commission under that subchapter; and

(3) corporations authorized by the Commission to acquire control of at least one motor carrier subject to its jurisdiction under that subchapter.

(b) Section 11301 of this title does not apply when the total value of capital stock (or principal amount of other securities to be issued) and the value of capital stock and principal amount of other securities then outstanding is not more than \$1,000,000, or to notes of a maturity of not more than 2 years that aggregate not more than \$200,000. Notes that, with other outstanding notes of a maturity of not more than 2 years, aggregate that amount may be issued without regard to the percentage limitations applicable under section 11301 (b) (2) of this title. The value of capital stock having no par value is the fair market value on the date of issue of that stock, and the value of capital stock that has a par value is the fair market value on the date of issue or the par value, whichever is greater.

(c) This section does not apply to the United States Government, a State, or an instrumentality or political subdivision of one of them.

49 USC 11303.

§ 11303. Equipment trusts: recordation; evidence of indebtedness

(a) A mortgage (other than a mortgage under the Ship Mortgage Act, 1920), lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of railroad cars, locomotives, or other rolling stock or vessels, intended for a use related to interstate commerce may be filed with the Interstate Commerce Commission. An assignment of a right or interest under one of those instruments and an amendment to that

instrument or assignment including a release, discharge, or satisfaction of any part of it may also be filed with the Commission. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Commission regulations. When filed under this section, that document is notice to, and enforceable against, all persons. A document filed under this section does not have to be filed, deposited, registered, or recorded under another law of the United States, a State (or its political subdivisions), or territory or possession of the United States, related to filing, deposit, registration, or recordation of those documents. This section does not change the Ship Mortgage Act, 1920.

46 USC 984.
Record system.

(b) The Commission shall maintain a system for recording each document filed under subsection (a) of this section and mark each of them with a consecutive number and the date and hour of their recordation. The Commission shall maintain and keep open for public inspection an index of documents filed under that subsection. That index shall include the name and address of the principal debtors, trustees, guarantors, and other parties to those documents and may include other facts that will assist in determining the rights of the parties to those transactions.

§ 11304. Security interests in certain motor vehicles

49 USC 11304.
Definitions.

(a) In this section—

(1) “motor vehicle” means a truck of rated capacity (gross vehicle weight) of at least 10,000 pounds, a highway tractor of rated capacity (gross combination weight) of at least 10,000 pounds, a property-carrying trailer or semitrailer with at least one load-carrying axle of at least 10,000 pounds, or a motor bus with a seating capacity of at least 10 individuals.

(2) “lien creditor” means a creditor having a lien on a motor vehicle and includes an assignee for benefit of creditors from the date of assignment, a trustee in bankruptcy from the date of filing of the petition in bankruptcy, and a receiver in equity from the date of appointment of the receiver.

(3) “security interest” means an interest (including an interest established by a conditional sales contract, mortgage, equipment trust, or other lien or title retention contract, or lease) in a motor vehicle when the interest secures payment or performance of an obligation.

(4) “perfection”, as related to a security interest, means taking action (including public filing, recording, notation on a certificate of title, and possession of collateral by the secured party), or the existence of facts, required under law to make a security interest enforceable against general creditors and subsequent lien creditors of a debtor, but does not include compliance with requirements related only to the establishment of a valid security interest between the debtor and the secured party.

(b) A security interest in a motor vehicle owned by, or in the possession and use of, a carrier having a certificate or permit issued under section 10922 or 10923 of this title and owing payment or performance of an obligation secured by that security interest is perfected in all jurisdictions against all general, and subsequent lien, creditors of, and all persons taking a motor vehicle by sale (or taking or retaining a security interest in a motor vehicle) from, that carrier when—

Ante, pp. 1409,
1410.

(1) a certificate of title is issued for a motor vehicle under a law of a jurisdiction that requires or permits indication, on a

certificate or title, of a security interest in the motor vehicle if the security interest is indicated on the certificate;

(2) a certificate of title has not been issued and the law of the State where the principal place of business of that carrier is located requires or permits public filing or recording of, or in relation to, that security interest if there has been such a public filing or recording; and

(3) a certificate of title has not been issued and the security interest cannot be perfected under paragraph (2) of this subsection, if the security interest has been perfected under the law (including the conflict of laws rules) of the State where the principal place of business of that carrier is located.

(c) This section does not affect a security interest perfected before January 1, 1959.

SUBCHAPTER II—OWNERSHIP

§ 11321. Limitation on ownership of certain water carriers

(a) (1) Notwithstanding sections 11343 and 11344 of this title, a carrier, or a person controlling, controlled by, or under common control with a rail, express, sleeping car, or pipeline carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may not own, operate, control, or have an interest in a water common carrier or vessel carrying property or passengers on a water route with which it does or may compete for traffic.

Ante, p. 1359.

Hearing.

(2) The Commission may decide, after a full hearing, questions of fact related to competition or the possibility of competition under this subsection on application of a carrier. A carrier may file an application to determine whether an existing service violates this subsection and may request permission to continue operation of a vessel or that action be taken under subsection (b) of this section. The Commission may begin a proceeding under this subsection on its own initiative or on application of a shipper to investigate the operation of a vessel used by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter if the carrier has not applied to the Commission and had the question of competition or the possibility of competition determined under this subsection.

(b) Notwithstanding subsection (a) of this section, the Commission may authorize a carrier providing transportation subject to the jurisdiction of the Commission under that subchapter to own, operate, control, or have an interest in a water common carrier or vessel that is not operated through the Panama Canal and with which the carrier does or may compete for traffic when the Commission finds that ownership, operation, control, or interest will still allow that water common carrier or vessel to be operated in the public interest advantageously to interstate commerce and that it will still allow competition, without reduction, on the water route in question. However, section 11343 of this title also applies to a transaction or interest under this subsection if the transaction or interest is within the scope of that section. The Commission may begin a proceeding under this subsection on application of a carrier. An authorization under this subsection is not necessary for a carrier that obtained an order of extension before

September 18, 1940, under section 5(21) of the Interstate Commerce Act (37 Stat. 567), as amended, if the order is still in effect.

49 USC 5.

(c) The Commission may take action under this section only after a full hearing. An order entered as a result of the action may be conditioned on giving security for the payment of an amount of money or the discharge of an obligation that is required to be paid or discharged under that order.

§ 11322. Restrictions on officers and directors

49 USC 11322.

(a) A person may hold the position of officer or director of more than one carrier as defined in section 11301(a)(1) of this title only when authorized by the Interstate Commerce Commission. The Commission may authorize a person to hold the position of officer or director of more than one of those carriers when public or private interests will not be adversely affected.

(b) An officer or director of a carrier referred to in subsection (a) of this section may not—

(1) receive, for the benefit of that officer or director, a thing of value in relation to the negotiation, hypothecation, or sale of a security issued or to be issued by that carrier;

(2) share in the proceeds from the negotiation, hypothecation, or sale of a security issued or to be issued by that carrier; or

(3) participate in making or paying dividends of an operating carrier from funds included in a capital account.

§ 11323. Limitation on ownership of other carriers by freight forwarders

49 USC 11323.

(a) A freight forwarder, or a person controlling, controlled by, or under common control with a freight forwarder, providing service subject to the jurisdiction of the Interstate Commerce Commission under subchapter IV of chapter 105 of this title, may not acquire control of a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter. However, this subsection does not prohibit a carrier providing transportation under subchapter I, II, or III of chapter 105 from acquiring control of another such carrier under subchapter III of this chapter but subject to section 11321.

Ante, p. 1369.*Ante*, pp. 1359, 1361, 1365.

(b) A director, officer, employee, or agent of a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title or a person controlling, controlled by, or under common control with one of those carriers, may not, for that person's pecuniary benefit, own, lease, control, or hold stock in a freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter. However, this subsection does not prohibit the holding of a director's qualifying shares of stock from which no personal pecuniary benefit is derived by the holder.

(c) This subtitle does not prohibit a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title or a person controlling, controlled by, or under common control with one of those carriers from controlling a freight forwarder. When that control exists, a rate, classification, rule, or practice of one of those carriers may not be found to be unlawful because of the relationship.

SUBCHAPTER III—COMBINATIONS

49 USC 11341. **§ 11341. Scope of authority**

(a) The authority of the Interstate Commerce Commission under this subchapter is exclusive. A carrier or corporation participating in or resulting from a transaction approved by the Commission under this subchapter may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in that transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction. However, if a purchase and sale, a lease, or a corporate consolidation or merger is involved in the transaction, the carrier or corporation may carry out the transaction only with the assent of a majority, or the number required under applicable State law, of the votes of the holders of the capital stock of that corporation entitled to vote. The vote must occur at a regular meeting, or special meeting called for that purpose, of those stockholders and the notice of the meeting must indicate its purpose.

(b) A power granted under this subchapter to a carrier or corporation is in addition to and changes its powers under its corporate charter and under State law. Action under this subchapter does not establish or provide for establishing a corporation under the laws of the United States.

49 USC 11342. **§ 11342. Limitation on pooling and division of transportation or earnings**

Ante, pp. 1359,
1361, 1365.

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title may not agree or combine with another of those carriers to pool or divide traffic or services or any part of their earnings without the approval of the Commission under this section or sections 11124 and 11125 of this title. The Commission may approve and authorize the agreement or combination if the carriers involved assent to the pooling or division and the Commission finds that a pooling or division of traffic, services, or earnings—

(1) will be in the interest of better service to the public or of economy of operation; and

(2) will not unreasonably restrain competition.

(b) The Commission may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the carriers.

(c) This section affects an agreement or combination filed with the Commission before March 19, 1941, to which a water common carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title is a party only when the Commission determines that the agreement or combination does not meet the requirements for approval and authorization under subsection (a) of this section.

Proceedings.

(d) The Commission may begin a proceeding under this section on its own initiative or on application.

49 USC 11343. **§ 11343. Consolidation, merger, and acquisition of control**

(a) The following transactions involving carriers providing transportation subject to the jurisdiction of the Interstate Commerce Com-

mission under subchapter I (except a pipeline carrier), II, or III of chapter 105 of this title may be carried out only with the approval and authorization of the Commission:

Ante, pp. 1359, 1361, 1365.

(1) consolidation or merger of the properties or franchises of at least 2 carriers into one corporation for the ownership, management, and operation of the previously separately owned properties.

(2) a purchase, lease, or contract to operate property of another carrier by any number of carriers.

(3) acquisition of control of a carrier by any number of carriers.

(4) acquisition of control of at least 2 carriers by a person that is not a carrier.

(5) acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers.

(6) acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier.

(b) A person may carry out a transaction referred to in subsection (a) of this section or participate in achieving the control or management, including the power to exercise control or management, in a common interest of more than one of those carriers, regardless of how that result is reached, only with the approval and authorization of the Commission under this subchapter. In addition to other transactions, each of the following transactions are considered achievements of control or management:

(1) A transaction by a carrier has the effect of putting that carrier and persons affiliated with it, taken together, in control of another carrier.

(2) A transaction by a person affiliated with a carrier has the effect of putting that carrier and persons affiliated with it, taken together, in control of another carrier.

(3) A transaction by at least 2 persons acting together (one of whom is a carrier or is affiliated with a carrier) has the effect of putting those persons and carriers and persons affiliated with any of them, or with any of those affiliated carriers, taken together, in control of another carrier.

(c) A person is affiliated with a carrier under this subchapter if, because of the relationship between that person and a carrier, it is reasonable to believe that the affairs of another carrier, control of which may be acquired by that person, will be managed in the interest of the other carrier.

(d) (1) Approval and authorization by the Commission are not required if the only parties to a transaction referred to in subsection (a) of this section are motor carriers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and the aggregate gross operating revenues of those carriers were not more than \$300,000 during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties covering the transaction. However, the approval and authorization of the Commission is required when a motor carrier that is controlled by or affiliated with a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter is a party to the transaction.

(2) The approval and authorization of the Commission are not required if the only parties to a transaction referred to in subsection (a) of this section are street, suburban, or interurban electric railways

that are not controlled by or under common control with a carrier that is operated as part of a general railroad system of transportation.

49 USC 11344.

§ 11344. Consolidation, merger, and acquisition of control: general procedure and conditions of approval

Notification.

(a) The Interstate Commerce Commission may begin a proceeding to approve and authorize a transaction referred to in section 11343 of this title on application of the person seeking that authority. When an application is filed with the Commission, the Commission shall notify the chief executive officer of each State in which property of the carriers involved in the proposed transaction is located and shall notify those carriers. If a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title is involved in the transaction, the Commission must notify the persons specified in section 10328(b) of this title. The Commission shall hold a public hearing when a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter is involved in the transaction unless the Commission determines that a public hearing is not necessary in the public interest.

Ante, p. 1361.

Hearing.

Ante, p. 1359.

(b) In a proceeding under this section, the Commission shall consider at least the following:

(1) the effect of the proposed transaction on the adequacy of transportation to the public.

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

(3) the total fixed charges that result from the proposed transaction.

(4) the interest of carrier employees affected by the proposed transaction.

(c) The Commission shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Commission may impose conditions governing the transaction. When the transaction contemplates a guaranty or assumption of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Commission may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. When a rail carrier, or a person controlled by or affiliated with a rail carrier, is an applicant and the transaction involves a motor carrier, the Commission may approve and authorize the transaction only if it finds that the transaction is consistent with the public interest, will enable the rail carrier to use motor carrier transportation to public advantage in its operations, and will not unreasonably restrain competition. When a rail carrier is involved in the transaction, the Commission may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Commission finds their inclusion to be consistent with the public interest.

49 USC 11345.

§ 11345. Consolidation, merger, and acquisition of control: rail carrier procedure

(a) If a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title is involved in a proposed transaction under section 11343 of this title, this section and section 11344 of this title also apply to the transaction. The Commission shall publish notice of

Notice,
publication in
Federal Register.

the application in the Federal Register by the end of the 30th day after the application is filed with the Commission and after a certified copy of it is furnished to the Secretary of Transportation. However, if the application is incomplete, the Commission shall reject it by the end of that period. The order of rejection is a final action of the Commission under section 10327 of this title.

Ante, p. 1348.

Filing comments.

(b) Written comments about an application may be filed with the Commission within 45 days after notice of the application is published under subsection (a) of this section. Copies of those comments shall be served on the Secretary of Transportation and the Attorney General, each of whom may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Commission by the end of the 15th day after the date of receipt of the written comments.

(c) The Commission shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it and given to the Secretary of Transportation by the 90th day after publication of notice under that subsection.

Evidentiary proceedings.

(d) The Commission must conclude evidentiary proceedings by the 240th day after the date of publication of notice under subsection (a) of this section. However, if the application involves the merger or control of at least 2 class I railroads, as defined by the Commission, it must conclude evidentiary proceedings by the end of the 24th month after the date of publication of notice under subsection (a) of this section. The Commission must issue a final decision by the 180th day after the date it concludes the evidentiary proceedings. If the Commission does not issue a decision that is a final action under section 10327 of this title, it shall send written notice to Congress that a decision was not issued and the reason why it was not issued.

Waiver.

(e) The Commission may waive the requirement that an initial decision be made under section 10327 of this title and make a final decision itself when it determines that action is required for the timely execution of its functions under this subchapter or that an application governed by this section is of major transportation importance. The decision of the Commission under this subsection is a final action under section 10327 of this title.

(f) The Secretary of Transportation may propose changes in transactions governed by this section when a rail carrier is involved. The Secretary may appear before the Commission to support those changes.

§ 11346. Consolidation, merger, and acquisition of control: expedited rail carrier procedure

49 USC 11346.

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title or the Secretary of Transportation may apply, before January 1, 1982, for authority for and approval of a merger, consolidation, unification or coordination project (as described in section 1654(c) of this title), joint use of tracks or other facilities, or acquisition or sale of assets involving one of those rail carriers, under this section instead of sections 11344 and 11345 of this title. The Secretary may apply under this section only when the parties to the application that are rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of that chapter consent to an application by the Secretary. A rail carrier may apply under

Ante, p. 1359.

this section only if it sent the proposed transaction to the Secretary for a report under section 11350 of this title at least 6 months before applying under this section.

Notice.

(b) When the Commission notifies persons required to receive notice that an application has been filed under this section, the Commission must include in the notice a copy of the application, a summary of the proposed transaction, and the applicant's reasons and public interest justification for the transaction. When the Commission notifies the Secretary of Transportation that an application has been filed under this section, the Commission shall also request the report of the Secretary prepared under section 11350 of this title. By the 10th day after receiving an application under this section, the Commission shall send notice of the proposed transaction to—

- (1) the chief executive officer of each State that may be affected by the execution or implementation of the proposed transaction;
- (2) the Attorney General;
- (3) the Secretary of Labor; and
- (4) the Secretary of Transportation (unless the Secretary is the applicant under subsection (a) of this section).

Panel;
recommended
decisions.

(c) The Commission shall designate a panel of the Commission to make a recommended decision on each application under this section. The panel must begin a proceeding by the 90th day after the date the Commission receives the application, complete the proceeding by the 180th day after the application is referred to it, and give its recommended decision and certify the record to the entire Commission by the 90th day after the proceeding is completed. The panel may use employees appointed under section 3105 of title 5 and the Rail Services Planning Office in conducting the proceeding, evaluating the application and comments received about it, and determining whether it is in the public interest to approve and authorize the transaction under the last sentence of subsection (d) of this section. To carry out this subsection, the panel may make rules and rulings to avoid unnecessary costs and delay. In making its recommended decision, the panel shall—

- (1) request the views of the Secretary of Transportation about the effect of the transaction on the national transportation policy, as stated by the Secretary, and consider the report submitted under section 11350 of this title;
- (2) request the views of the Attorney General about the effect of the transaction on competition; and
- (3) request the views of the Secretary of Labor about the effect of the transaction on rail carrier employees, particularly whether the proposal contains adequate employee protection provisions.

Written views to
the panel.
Availability to
public.

The Secretaries and the Attorney General shall send their written views to the panel. Those statements are available to the public under section 552(a) of title 5.

(d) When the recommended decision and record of a proceeding under this section are certified to the entire Commission, it must hear oral argument on the matter certified to it and make a final decision by the 120th day after receiving the recommended decision and record. The Commission may extend a time period under subsection (c) of this section or under this subsection but must make its final decision by the end of the 2d year after receipt of the application by the Commission. The Commission shall consider the report of the Secretary of Transportation under section 11350 of this title in making

its final decision. The final decision must be accompanied by a written opinion stating the reasons for the Commission action. The Commission may—

- (1) approve the transaction if the Commission determines the transaction is in the public interest;
- (2) approve the transaction with conditions and modifications that it determines are in the public interest; or
- (3) disapprove the transaction if it determines the transaction is not in the public interest.

§ 11347. Employee protective arrangements in transactions involving rail carriers 49 USC 11347.

When a rail carrier is involved in a transaction for which approval is sought under sections 11344 and 11345 or section 11346 of this title, the Interstate Commerce Commission shall require the carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under this section before February 5, 1976, and the terms established under section 565 of title 45. Notwithstanding this subtitle, the arrangement may be made by the rail carrier and the authorized representative of its employees. The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Commission (or if an employee was employed for a lesser period of time by the carrier before the action became effective, for that lesser period).

§ 11348. Interstate Commerce Commission authority over non-carrier that acquires control of carrier 49 USC 11348.

(a) When the Interstate Commerce Commission approves and authorizes a transaction under sections 11344 and 11345 of this title in which a person not a carrier providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title acquires control of at least one carrier subject to the jurisdiction of the Commission, the person is subject, as a carrier, to the following provisions of this title that apply to the carrier being acquired by that person, to the extent specified by the Commission: section 10764, subchapter III of chapter 111, and sections 11301, 11302, 11709, 11711, 11901(f), (h) (1), 11909 (a) (1), (b), and 11911 (a).

Ante, p. 1397.

(b) When a person subject to sections 11301, 11302, 11322, 11709, and 11911 of this title because of acquiring control of a carrier, applies to the Commission for authority to issue securities or assume obligations or liabilities under those sections, the Commission may authorize the issue or assumption only when it finds the issue or assumption—

- (1) is consistent with the proper performance of public transportation by the carrier that is controlled by that person;
- (2) will not impair the ability of the carrier to provide public transportation; and
- (3) is consistent with the public interest in other respects.

§ 11349. Temporary operating approval for transactions involving motor and water carriers 49 USC 11349.

(a) Pending determination of an application filed with the Interstate Commerce Commission under this subchapter for approval of a consolidation or merger of the properties of at least 2 motor carriers

or at least 2 water carriers, or of a purchase, lease, or contract to operate the properties of at least one motor carrier or at least one water carrier, the Commission may approve, for a period of not more than 180 days, the operation of the properties sought to be acquired by the person proposing in the application to acquire those properties. The Commission may approve operation of motor carrier properties when it appears that failure to grant the approval may result in destruction of or injury to those motor carrier properties the person is seeking to acquire, or substantially interfere with their future usefulness in providing adequate and continuous service to the public. The Commission may approve the operation of water carrier properties only for good cause shown.

(b) The Commission may take action under subsection (a) of this section without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5. Transportation provided by a motor carrier under a grant of approval under this section is subject to this subtitle.

Ante, p. 1345.
5 USC 551.

49 USC 11350.

§ 11350. Responsibility of the Secretary of Transportation in certain transactions

Publication in
Federal Register.
Ante, p. 1359.

(a) When a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title sends a proposed transaction to the Secretary of Transportation under section 11346(a) of this title or the Secretary develops a proposed transaction for submission to the Commission under that section, the Secretary shall publish a summary and a detailed account of the transaction in the Federal Register and give notice of the transaction to the Attorney General and to the chief executive officer of each State in which property of a rail carrier involved in the transaction is located. The Secretary shall initiate an informal proceeding on the proposed transaction under section 553 of title 5.

Study.

(b) By the 10th day after an application is submitted to the Commission under section 11346 of this title, the Secretary shall complete and send to the Commission a study of the proposed transaction about—

- (1) the needs of rail transportation in the geographical area affected by the transaction;
- (2) the effect of the transaction on competition in rail transportation and other modes of transportation in the geographical area affected by the transaction;
- (3) the environmental impact of the transaction and of alternative choices of action;
- (4) the effect of the transaction on employment;
- (5) the cost of rehabilitation and modernization of track, equipment, and other facilities, with a comparison of the potential savings or losses from other possible choices of action;
- (6) the rationalization of the rail system;
- (7) the impact of the transaction on shippers, consumers, and rail carrier employees;
- (8) the effect of the transaction on communities in the geographical area affected by the transaction and on geographical areas contiguous to the affected areas; and
- (9) whether the proposed transaction will improve rail service.

SUBCHAPTER IV—FINANCIAL STRUCTURE

§ 11361. Scope of authority: changes in financial structure

49 USC 11361.

(a) The authority of the Interstate Commerce Commission to act under this subchapter is exclusive. The Commission may approve and authorize a carrier, as defined in section 11301(a) (1) of this title, to change (1) a part of a class of its securities, as defined in section 11301 (a) (2) of this title, or (2) a part of an instrument under which a class of its securities is issued or a class of its obligations is secured. When a change is approved and authorized by the Commission under this subchapter, the carrier may carry out the change notwithstanding an express provision in the affected instrument or a State law and without getting other approval from the Commission or from a State authority. A person participating in carrying out a change that is approved and authorized under this subchapter is exempt from all other law, including State and municipal law, as necessary to let that person carry out the change.

(b) The Commission may not approve an application filed under this section by a carrier that is in equity receivership or reorganization under section 205 of title 11.

(c) A power granted to a carrier under this subchapter changes its powers under its corporate charter and under State law.

(d) This subchapter does not affect the negotiability of a security of a carrier or of the obligation of a carrier that assumed liability related to a security. This subchapter does not apply to an equipment-trust certificate under which a carrier is obligated, to an evidence of indebtedness of a carrier the payment of which is secured solely by equipment, or to another instrument under which that equipment-trust certificate or evidence of indebtedness was issued or by which either of them is secured.

§ 11362. Criteria for approval and authority

49 USC 11362.

(a) A carrier may apply to the Interstate Commerce Commission for approval and authority to make a change under this subchapter. To approve a proposed change, the Commission must find that the proposed change—

- (1) is within the scope of section 11361 of this title;
- (2) will be in the public interest;
- (3) will be in the best interests of the carrier, of each class of its stockholders, and of the holders of each class of the carrier's obligations that are affected by the change; and
- (4) will not be against the interests of a creditor of the carrier who is not affected by the change.

If the change involves an issuance of securities, the Commission must also make the findings required under section 11301(d) (1) of this title.

(b) (1) The Commission shall begin a proceeding under this section on receipt of an application but may require an applicant to get assurances of assent to the change from the holders of the outstanding shares of the securities that will be affected by the change before continuing with the proceeding. The Commission may determine the percentage of the principal amount or number of those shares needed to establish assurance of assent to the change. A class of securities is considered to be affected by a proposed change only if the change is proposed to a part of that class or to a part of an instrument under which that class was issued or by which it is secured. However, if a

proposed change is to an instrument under which at least 2 classes of securities were issued and are outstanding or secured by that instrument, only those classes to which the change is related are considered to be affected. The Commission shall divide the securities to be affected by a proposed change under this subchapter into reasonable classes for purposes of this subchapter.

(2) On receipt of an application of a carrier under this section the Commission shall notify, and file a copy of the application with, the chief executive officer of each State in which that carrier operates. The appropriate authorities of those States are entitled to be admitted as parties to a proceeding under this section to represent the rights and interests of their people and States.

Notice.

(c) The carrier must give notice of the proceeding to the holders of the class of securities affected. The Commission may direct the carrier to give notice to other persons the Commission determines to have an interest in the proceeding. The carrier may give notice under this subsection only after it gets assurances of assent when they are required under this section.

(d) The Commission may impose conditions governing the proposed change. The Commission may determine the effective date for a change it approves and authorizes under this subchapter and may allow it to become effective on publication of a declaration to that effect by the carrier. After an application is approved, the Commission may change a condition imposed and impose supplemental requirements for good cause shown subject to the requirements of this subchapter.

49 USC 11363.

§ 11363. Assent of holders of securities and certain other instruments

(a) (1) After making the findings required under section 11362(a) of this title, the Commission may approve and authorize the change if it is assented to by the holders of at least 75 percent of the aggregate principal amount or number of outstanding shares of each class of securities affected by the change. The Commission may increase the percentage required for assent under this subsection for a class of shares when an increase is in the public interest and—

(A) 75 percent of the shares in that class are held by less than 25 security holders; or

(B) that class is entitled to vote for the election of directors of the carrier and the Commission determines that the assent of at least 25 percent of the security holders of that class are controlled by the carrier or a person controlling the carrier.

(2) The carrier may withdraw its application after the Commission makes the findings required under section 11362(a) of this title. If the application is not withdrawn, the Commission must require the carrier to submit the proposed change, with conditions imposed by the Commission, to the holders of each class of its securities affected by the change for their assent or rejection.

(b) (1) In determining the percentage of outstanding securities when making a finding under section 11362(a) of this title, a security that secures an evidence of indebtedness of the carrier or of a company controlling or controlled by the carrier is considered to be outstanding unless the Commission determines that the proposed change does not materially affect the interest of the holder of that evidence of indebtedness. When that security is considered to be outstanding, assent to a proposed change may be given, notwithstanding another instrument, only—

(A) if the security is pledged as security under an instrument under which an evidence of indebtedness was issued and is outstanding, by the holder of a majority of the principal amount of the evidence of indebtedness; or

(B) if the security secures an evidence of indebtedness not issued under an instrument under which an evidence of indebtedness was issued, by the holder of the evidence of indebtedness.

(2) In addition to a submission required under subsection (a) of this section, the Commission shall require the carrier to submit a proposed change to a security referred to in this subsection, with requirements imposed by the Commission, to the holder of the evidence of indebtedness referred to in paragraph (1) (A) and (B) of this subsection as appropriate, for assent or rejection. A carrier is not required to submit the change to the trustee of the instrument referred to in that paragraph.

(c) If the Commission determines that the assent of the holder of a security not entitled to vote for the election of directors of the carrier or an evidence of indebtedness is in the control of the carrier or of a person controlling the carrier, that security or evidence of indebtedness is not considered to be outstanding.

§ 11364. Procedure

49 USC 11364.

(a) The Commission may prescribe the manner in which assents, assurances of assent, or rejections of the security holders may be solicited whether the solicitation is made before or after the Commission approves and authorizes the proposed change.

(b) The Commission may approve a bank or trust company, incorporated under the law of the United States or a State, that is a member of the Federal Reserve System and has a capital and surplus of at least \$2,000,000, to receive assents and revocations of assents from security holders. The Commission may require the security holders to send those assents and revocations to that bank or trust company. That bank or trust company shall certify the result of the submission to the Commission. The Commission may rely on that certification as conclusive evidence in determining the result of that submission.

§ 11365. Effect of change on other persons

49 USC 11365.

(a) When a change becomes effective under this subchapter, the change is binding on, and changes the rights of—

(1) each holder of a security of the carrier of each class affected by the change; and

(2) a trustee or other party to an instrument under which a class of securities has been issued or by which it is secured.

(b) An authorization and approval of a change under this subchapter is authority for, and approval of, a corresponding change of the obligation of another carrier that assumed liability related to that class of securities if that carrier consents to the change in writing. When consent is given, the corresponding change becomes effective when the change of the class of securities or instrument becomes binding. A person who is liable or obligated on a class of securities issued by a carrier is a carrier with respect to that class for the purposes of this subchapter.

§ 11366. Reports

49 USC 11366.

A carrier receiving approval and authorization to make a change under this subchapter shall report the action taken by it in making that change to the Interstate Commerce Commission. The Commission may require periodic or special reports.

49 USC 11367. **§ 11367. Application of other laws**

(a) Section 78n(a) of title 15 does not apply to a solicitation related to a proposed change under this subchapter.

(b) If the Interstate Commerce Commission finds an issuance of a security, that is an interest in a railroad equipment trust as defined in section 77c(a)(6) of title 15, under this subchapter complies with section 11301 of this title, it is considered to be an issuance subject to section 11301 within the meaning of section 77c(a)(6) of title 15. Section 77e of that title does not apply to the issuance, sale, or exchange of certificates of deposit representing securities of, or claims against, a carrier that are issued by committees in proceedings under this subchapter. Those certificates and transactions under this subchapter are exempt from subchapter I of chapter 2A of title 15.

15 USC 77a.

CHAPTER 115—FEDERAL-STATE RELATIONS

Sec.

11501. Interstate Commerce Commission authority over intrastate transportation.

11502. Conferences and joint hearings with State authorities.

11503. Tax discrimination against rail transportation property.

11504. Withholding State and local income tax by certain carriers.

11505. State action to enjoin rail carriers from certain actions.

11506. Registration of motor carriers by a State.

11507. Prison-made property governed by State law.

49 USC 11501. **§ 11501. Interstate Commerce Commission authority over intrastate transportation**

(a)(1) The Interstate Commerce Commission shall prescribe the rate, classification, rule, or practice for transportation or service provided by a carrier subject to the jurisdiction of the Commission under subchapter I or IV of chapter 105 of this title when the Commission finds that a rate, classification, rule, or practice of a State causes—

Ante, pp. 1359,
1369.

(A) between persons or localities in intrastate commerce and in interstate and foreign commerce, unreasonable discrimination against those persons or localities in interstate or foreign commerce; or

(B) unreasonable discrimination against or imposes an unreasonable burden on interstate or foreign commerce.

(2) The Commission may make a finding under this subsection involving a carrier providing transportation subject to its jurisdiction under subchapter I of chapter 105 of this title without separating interstate and intrastate property, revenues, and expenses, and without considering the total operations, or their results, of a carrier or group of carriers operating entirely in one State.

(b)(1) The Commission has exclusive authority to prescribe an intrastate rate for transportation provided by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title when—

(A) a rail carrier files with an appropriate State authority a change in an intrastate rate, or a change in a classification, rule, or practice that has the effect of changing an intrastate rate, that adjusts the rate to the rate charged on similar traffic moving in interstate or foreign commerce; and

(B) the State authority does not act finally on the change by the 120th day after it was filed.

(2) When a rail carrier files an application with the Commission under this subsection, the Commission shall prescribe the intrastate rate under the standards of subsection (a) of this section. Notice of the application shall be served on the State authority.

(c) The Commission may take action under this section only after a full hearing. Action of the Commission under this section supersedes State law or action taken under State law in conflict with the action of the Commission.

Hearing.

§ 11502. Conferences and joint hearings with State authorities

49 USC 11502.

(a) (1) In carrying out this subtitle as it applies to a class of persons providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, III, or IV of chapter 105 of this title, the Commission may—

Ante, pp. 1359, 1365, 1369.

(A) confer and hold joint hearings with the State authorities having regulatory jurisdiction of that class when the conference or hearing is related to an investigation of the relationship between rate structures and practices of carriers providing transportation or service subject to the jurisdiction of the State authorities and of the Commission, and the Commission may take action as a result of the investigation that may affect the rate-making authority of a State; and

(B) cooperate with and use the services, records, and facilities of the State authorities.

(2) In carrying out this subtitle as it applies to motor carriers and brokers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, the Commission may—

Ante, p. 1361.

(A) confer and hold joint hearings with State authorities;

(B) cooperate with and use the services, records, and facilities of State authorities; and

(C) make cooperative agreements with a State to enforce the economic laws and regulations of a State and the United States concerning highway transportation.

(b) When an investigation under this subtitle involving a common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I or IV of chapter 105 of this title, is about a rate, classification, rule, or practice of a State, the Commission shall notify the interested State of the proceeding before disposing of the issue.

(c) When a representative of a State authority sits with the Commission in an investigation about a carrier subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title, the representative may be given an allowance for travel and subsistence expenses. The Commission may determine the amount of the allowance.

Travel and subsistence allowances.

§ 11503. Tax discrimination against rail transportation property

49 USC 11503.

(a) In this section—

Definitions.

(1) "assessment" means valuation for a property tax levied by a taxing district.

(2) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) "rail transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(4) "commercial and industrial property" means property, other than transportation property and land used primarily for

agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax rate applicable to taxable property in the taxing district.

49 USC 11504.

§ 11504. Withholding State and local income tax by certain carriers

(a) (1) In this subsection, an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of a State if the employee—

(A) performs regularly assigned duties on a locomotive, car, or other track-borne vehicle in at least 2 States and the mileage

traveled in one State or subdivision of that State is more than 50 percent of the total mileage traveled by the employee while employed during the calendar year; or

(B) is engaged principally in maintaining roadways, signals, communications, and structures or in operating motortrucks from railroad terminals in at least 2 States and the percent of the time worked by the employee in one State or subdivision of that State is more than 50 percent of the total time worked by the employee while employed during the calendar year.

(2) A rail, express, or sleeping car carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall withhold from the pay of an employee referred to in paragraph (1) of this subsection only income tax required to be withheld by the laws of a State, or subdivision of that State—

Ante, p. 1359.

(A) in which the employee earns more than 50 percent of the pay received by the employee from the carrier; or

(B) that is the residence of the employee (as shown on the employment records of the carrier), if the employee did not earn in one State or subdivision more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

(b) (1) In this subsection—

(A) "State" includes a State, territory, or possession of the United States, and the Commonwealth of Puerto Rico.

"State."

(B) an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of a State in which the mileage traveled by the employee in that State or subdivision is more than 50 percent of the total mileage traveled by the employee while employed during the calendar year.

(2) A motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and a motor private carrier shall withhold from the pay of an employee having regularly assigned duties on a motor vehicle in at least 2 States, only income tax required to be withheld by the laws of a State, or subdivision of that State—

Ante, p. 1361.

(A) in which the employee earns more than 50 percent of the pay received by the employee from the carrier; or

(B) that is the residence of the employee (as shown on the employment records of the carrier), if the employee did not earn in one State or subdivision more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

(c) (1) In this subsection, an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of that State in which the time worked by the employee in the State or subdivision is more than 50 percent of the total time worked by the employee while employed during the calendar year.

(2) A water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title or a water carrier or class of water carriers providing transportation on inland or coastal waters under an exemption under this subtitle shall file income tax information returns and other reports only with—

Ante, p. 1365.

(A) the State and subdivision of residence of the employee (as shown on the employment records of the carrier); and

(B) the State and subdivision in which the employee earned more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

(3) This subsection applies to pay of a master, officer, or seaman who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal or noncontiguous trade or in the fisheries of the United States.

(d) A rail, express, sleeping car, motor, and motor private carrier withholding pay from an employee under subsection (a) or (b) of this section shall file income tax information returns and other reports only with—

(1) the State and subdivision of residence of the employee; and

(2) the State and subdivision in which withholding of pay is required under subsection (a) or (b) of this section.

49 USC 11505.

§ 11505. State action to enjoin rail carriers from certain actions

(a) The attorney general of a State or transportation regulatory authority of a State or area affected by a violation of sections 10901-10907 of this title, may bring a civil action to enjoin a rail carrier from violating those sections.

Ante, pp.
1402-1407.

(b) A transportation regulatory authority of a State affected by an abandonment of service by a freight forwarder in violation of section 10933 of this title may bring a civil action to enjoin the abandonment.

Ante, p. 1418.

49 USC 11506.

§ 11506. Registration of motor carriers by a State

"Standards," and
"amendments to
standards."

(a) In this section, "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Interstate Commerce Commission to prove the lawfulness of transportation by motor carrier referred to in section 10521(a) (1) and (2) of this title by—

Ante, p. 1361.

(1) filing and maintaining certificates and permits issued to the motor carrier by the Commission;

(2) registering motor vehicles operating under the certificates and permits;

(3) filing and maintaining proof of required insurance coverage or qualification as a self-insurer; and

(4) filing the name of a local agent for service of process.

(b) The requirement of a State that a motor carrier, providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and providing transportation in that State, register the certificate or permit issued to the carrier under section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10521(a) (1) and (2) of this title when the registration is completed under standards of the Commission under subsection (c) of this section. When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden.

Ante, p. 1361.

Ante, pp. 1409,
1410.

Ante, p. 1361.

(c) (1) The Commission shall maintain standards and amendments to standards (A) prepared and certified to it by the national organization of the State Commissions, and (B) prescribed by the Commission. If the national organization determines to withdraw entirely standards prescribed by the Commission, the Commission shall prescribe new standards by the end of the first year after the national organization determines to withdraw the standards.

(2) An amendment to the standards prepared and certified by the national organization and prescribed by the Commission is effective

when the amendment is prescribed or at another time as determined by the national organization.

(d) The national organization shall consult with the Commission and representatives of motor carriers subject to the State registration requirement when preparing amendments to the standards. Different amendments may be prescribed for each class of motor carriers as warranted by the differences in the operations of each class.

(e) This section does not—

(1) authorize standards in conflict with regulations of the Commission; or

(2) affect the authority of the Commission to interpret its regulations and certificates and permits issued under section 10922 or 10923 of this title.

§ 11507. Prison-made property governed by State law

Goods, wares, and merchandise produced or mined in a penal institution or by a prisoner not on parole or probation and transported into and used, sold, or stored in a State or territory or possession of the United States, is subject to the laws of that State, territory, or possession. This section does not apply to commodities produced in a penal institution of the United States Government for its use.

Ante, pp. 1409,
1410.
49 USC 11507.

CHAPTER 117—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

Sec.

- 11701. General authority.
- 11702. Enforcement by the Interstate Commerce Commission.
- 11703. Enforcement by the Attorney General.
- 11704. Action by a private person to enjoin abandonment of service.
- 11705. Rights and remedies of persons injured by certain carriers.
- 11706. Limitation on actions by and against common carriers.
- 11707. Liability of common carriers under receipts and bills of lading.
- 11708. Private enforcement: motor carrier and freight forwarder licensing.
- 11709. Liability for issuance of securities by certain carriers.
- 11710. Liability when property is delivered in violation of routing instructions.

§ 11701. General authority

(a) The Interstate Commerce Commission may begin an investigation under this subtitle on its own initiative or on complaint. If the Commission finds that a carrier or broker is violating this subtitle, the Commission shall take appropriate action to compel compliance with this subtitle. The Commission may take that action only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

(b) A person, including a governmental authority, may file with the Commission a complaint about a violation of this subtitle by a carrier providing, or broker for, transportation or service subject to the jurisdiction of the Commission under this subtitle. The complaint must state the facts that are the subject of the violation and, if it is against a water carrier, must be made under oath. The Commission may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Commission may not dismiss a complaint made against a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title because of the absence of direct damage to the complainant.

(c) A formal investigative proceeding begun by the Commission under subsection (a) of this section related to a rail carrier is dismissed automatically unless it is concluded by the Commission with

49 USC 11701.
Investigations.

Notice.

Complaints.

Ante, p. 1359.

administrative finality by the end of the 3d year after the date on which it was begun.

49 USC 11702.

§ 11702. Enforcement by the Interstate Commerce Commission

(a) The Interstate Commerce Commission may bring a civil action—

Ante, pp.
1402-1407,
1418.

(1) to enjoin a rail carrier from violating section 10901-10907 or 10933 of this title, or a regulation prescribed or certificate issued under any of those sections;

Ante, p. 1415,
1433, 1434.

(2) to enforce section 10930 or 11323 of this title, or subchapter III of chapter 113 of this title and to compel compliance with the order of the Commission under any of those sections and that subchapter;

(3) to enforce an order of the Commission, except a civil action to enforce an order for the payment of money, when it is violated by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title;

(4) to enforce this subtitle (except a civil action under a provision of this subtitle governing the reasonableness and discriminatory character of rates), or a regulation or order of the Commission or a certificate or permit issued under this subtitle when violated by a motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title;

Ante, p. 1361.

(5) to enforce this subtitle (except a civil action under a provision of this subtitle governing the reasonableness and discriminatory character of rates), or a regulation or order of the Commission or a certificate or permit issued under this subtitle, except a civil action to enforce an order for the payment of money, when violated by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title; and

Ante, p. 1365.

(6) to enforce this subtitle, or a regulation or order of the Commission or permit issued under this subtitle when violated by a carrier providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title.

Ante, p. 1369.

(b) In a civil action under subsection (a) (4) of this section—

(1) trial is in the judicial district in which the motor carrier or broker operates;

(2) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(3) a person participating with a carrier or broker in a violation may be joined in the civil action without regard to the residence of the person.

49 USC 11703.

§ 11703. Enforcement by the Attorney General

(a) The Attorney General may, and on request of the Interstate Commerce Commission shall, bring court proceedings to enforce this subtitle or a regulation or order of the Commission or certificate or permit issued under this subtitle and to prosecute a person violating this subtitle or a regulation or order of the Commission or certificate or permit issued under this subtitle.

(b) The United States Government may bring a civil action on behalf of a person to compel a common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title to provide that transportation or service to that person in compliance with this subtitle at the same rate charged,

Ante, p. 1358.

or on conditions as favorable as those given by the carrier, for like traffic under similar conditions to another person.

§ 11704. Action by a private person to enjoin abandonment of service 49 USC 11704.

An interested person may bring a civil action to enjoin an abandonment of service in violation of section 10933 of this title or a certificate issued under that section. *Ante*, p. 1418.

§ 11705. Rights and remedies of persons injured by certain carriers 49 USC 11705.

(a) A person injured because a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title does not obey an order of the Commission, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. *Ante*, p. 1359.

(b) (1) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff filed under subchapter IV of chapter 107 of this title. *Ante*, p. 1394.

(2) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this subtitle. *Ante*, pp. 1359, 1365.

(3) A common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II or IV of chapter 105 of this title is liable for damages resulting from the imposition of rates for transportation or service the Commission finds to be in violation of this subtitle. *Ante*, pp. 1361, 1369.

(c) (1) A person may file a complaint with the Commission under section 11701(b) of this title or bring a civil action under subsection (b) (1) or (2) of this section to enforce liability against a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title. A person may begin a proceeding under section 10704 or 10705 of this title to enforce liability under subsection (b) (3) of this section by filing a complaint with the Commission under section 11701(b) of this title.

(2) When the Commission makes an award under subsection (b) of this section, the Commission shall order the carrier to pay the amount awarded by a specific date. The Commission may order a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Commission requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier does not pay the amount awarded by the date payment was ordered to be made.

(d) (1) When a person begins a civil action under subsection (b) of this section to enforce an order of the Commission requiring the payment of damages by a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title, the text of the order of the Commission must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this

paragraph. The findings and order of the Commission are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district (A) in which the plaintiff resides, (B) in which the principal operating office of the carrier is located, (C) if a rail carrier, through which the railroad line of that carrier runs, or (D) if a water carrier, in which a port of call on a route operated by that carrier is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(3) The district court shall award a reasonable attorney's fee as a part of the damages for which a carrier is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.

49 USC 11706.

§ 11706. Limitation on actions by and against common carriers

Ante, p. 1359.

(a) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title must begin a civil action to recover charges for transportation or service provided by the carrier within 3 years after the claim accrues.

Ante, p. 1359,
1365.

(b) A person must begin a civil action to recover overcharges under section 11705(b) (1) of this title within 3 years after the claim accrues. If that claim is against a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I or III of chapter 105 of this title and an election to file a complaint with the Commission is made under section 11705(c) (1), the complaint must be filed within 3 years after the claim accrues.

(c) (1) A person must file a complaint with the Commission to recover damages under section 11705(b) (2) of this title within 2 years after the claim accrues.

(2) A person must begin a civil action to recover damages under section 11705(b) (3) of this title within 2 years after the claim accrues.

(d) The 3-year period under subsection (b) of this section is extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within that 3-year period. The 3-year period under subsection (b) of this section and the 2-year period under subsection (c) (1) of this section are each extended for 90 days from the time the carrier begins a civil action under subsection (a) of this section to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) A person must begin a civil action to enforce an order of the Commission against a carrier for the payment of money within one year after the date the order required the money to be paid.

(f) This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of (1) payment of the rate for the transportation or service involved, (2) subsequent refund for overpayment of that rate, or (3) deduction made under section 244 of title 31, whichever is later.

(g) A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

§ 11707. Liability of common carriers under receipts and bills of lading 49 USC 11707.

(a) (1) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or IV of chapter 105 of this title shall issue a receipt or bill of lading for property it receives for transportation under this subtitle. That carrier and any other common carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Commission under subchapter I, II, or IV are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier, or (3) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and applies to property reconsigned or diverted under a tariff filed under subchapter IV of chapter 107 of this title. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transportation nearest the destination but does not include a carrier providing only a switching service at the destination.

Ante, pp. 1359, 1361, 1369.

Ante, p. 1394.

(2) A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service subject to this subtitle and uses a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title to receive property from a consignor, the motor common carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor common carrier may deliver property for a freight forwarder on the freight forwarder's bill of lading, freight bill, or shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder's delivery receipt.

(b) The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c) (1) A common carrier may not limit or be exempt from liability imposed under subsection (a) of this section except as provided in this subsection. A limitation of liability or of the amount of recovery or representation or agreement in a receipt, bill of lading, contract, rule, or tariff filed with the Commission in violation of this section is void.

(2) If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

(3) A common carrier of passengers may limit its liability under its passenger rate for loss or injury of baggage carried on passenger trains, boats, or motor vehicles, or on trains, or boats, or motor vehicles carrying passengers.

Ante, p. 1389.

(4) A common carrier may limit its liability for loss or injury of property transported under section 10730 of this title.

(d) A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State, through which the defendant carrier operates a railroad or route.

(e) A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date that person receives written notice from the carrier that it has disallowed any part of the claim specified in the notice.

49 USC 11708.

§ 11708. Private enforcement: motor carrier and freight forwarder licensing

Ante, pp.
1409-1412,
1413,
1415-1417,
1333.

(a) If a person provides transportation by motor vehicle or service of a freight forwarder in clear violation of section 10921-10924, 10927, 10930-10932, or 11323 of this title, a person injured by the transportation or service may bring a civil action to enforce any such section. In a civil action under this subsection, trial is in the judicial district in which the person who violated that section operates.

(b) A copy of the complaint in a civil action under subsection (a) of this section shall be served on the Interstate Commerce Commission and a certificate of service must appear in the complaint filed with the court. The Commission may intervene in a civil action under subsection (a) of this section. The Commission may notify the district court in which the action is pending that it intends to consider the matter that is the subject of the complaint in a proceeding before the Commission. When that notice is filed, the court shall stay further action pending disposition of the proceeding before the Commission.

Notification.

(c) In a civil action under subsection (a) of this section, the court may determine the amount of and award a reasonable attorney's fee to the prevailing party. That fee is in addition to costs allowable under the Federal Rules of Civil Procedure.

28 USC app.

49 USC 11709.

§ 11709. Liability for issuance of securities by certain carriers

Ante, p. 1428.

A carrier issuing a security or assuming an obligation or liability that is void under section 11301 of this title and its directors, officers, attorneys, and other agents who participate in authorizing, issuing, hypothecating, or selling that security, or in authorizing the assumption of that obligation or liability, are jointly and severally liable for the damages sustained by a person who acquires for value, in good faith, and without notice that the issue or assumption is void (1) that security, or (2) a security under which an assumption or liability is void. If a security void under that section is acquired directly from the carrier issuing it, the holder may rescind the transaction and recover

the consideration given for the security when it is surrendered to that carrier.

§ 11710. Liability when property is delivered in violation of routing instructions

49 USC 11710.

(a) (1) When a carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title diverts or delivers property to another carrier in violation of routing instructions in the bill of lading, both of those carriers are jointly and severally liable to the carrier that was deprived of its right to participate in hauling that property for the total amount of the rate it would have received if it participated in hauling the property.

Ante, p. 1359.

(2) A carrier is not liable under paragraph (1) of this subsection when it diverts or delivers property in compliance with an order or regulation of the Commission.

(3) A carrier to whom property is transported is not liable under this subsection if it shows that it had no notice of the routing instructions before transporting the property. The burden of proving lack of notice is on that carrier.

(b) The court shall award a reasonable attorney's fee to the plaintiff in a judgment against the defendant carrier under subsection (a) of this section. The court shall tax and collect that fee as a part of the costs of the action.

CHAPTER 119—CIVIL AND CRIMINAL PENALTIES

Sec.

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§ 11901. General civil penalties

49 USC 11901.

(a) Except as otherwise provided in this section, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, an officer or agent of that carrier or a receiver, trustee, lessee, or agent of one of them, knowingly violating an order of the Commission under this subtitle is liable to the United States Government for a civil penalty of \$5,000 for each violation. Liability under this subsection is incurred for each distinct violation. A separate violation occurs for each day the violation continues.

(b) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or a receiver or trustee of that carrier, violating a regulation or order of the Commission under section 10761, 10762, 10764, 10765, or

Ante, pp. 1394, 1397.

- Ante*, p. 1425. 11128(a)(2) or (b) of this title is liable to the United States Government for a civil penalty of \$500 for each violation and for \$25 for each day the violation continues.
- Ante*, p. 1398. (c) A carrier, receiver, or trustee violating subchapter V of chapter 107 of this title, or a regulation under that subchapter, is liable to the United States Government for a civil penalty of \$500 for each violation. A separate violation occurs each day the violation continues.
- Ante*, pp. 1402-1407. (d) A person knowingly authorizing, consenting to, or permitting a violation of sections 10901-10907 of this title or of a condition of a certificate or a regulation under any of those sections, is liable to the United States Government for a civil penalty of not more than \$5,000.
- Ante*, pp. 1422-1425. (e) (1) A carrier, receiver, or operating trustee violating an order or direction of the Commission under section 11123, 11124, 11125, 11127, or 11128 (a) (1) of this title is liable to the United States Government for a civil penalty of at least \$100 but not more than \$500 for each violation and for \$50 for each day the violation continues.
- Ante*, p. 1424. (2) A rail carrier, receiver, or operating trustee violating section 11126 of this title is liable to the United States Government for a civil penalty of \$100 for each violation. A separate violation occurs for each car not counted when a car count is required under that section.
- Ante*, p. 1425. (f) (1) A person required under subchapter III of chapter 111 of this title to make, prepare, preserve, or submit to the Commission a record concerning transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that does not make, prepare, preserve, or submit that record as required under that subchapter, is liable to the United States Government for a civil penalty of \$500 for each violation.
- Ante*, p. 1359. (2) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, and a lessor, receiver, or trustee of that carrier, violating section 11144 (b) (1) of this title, is liable to the United States Government for a civil penalty of \$100 for each violation.
- Ante*, p. 1426. (3) A carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, a lessor, receiver, or trustee of that carrier, a person furnishing cars or protective services against heat or cold, and an officer, agent, or employee of one of them, required to make a report to the Commission or answer a question that does not make the report or does not specifically, completely, and truthfully answer the question, is liable to the United States Government for a civil penalty of \$100 for each violation.
- (4) A separate violation occurs for each day a violation under this subsection continues.
- (g) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle concerning transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person that (1) does not make the report, (2) does not specifically, completely, and truthfully answer the question, (3) does not make, prepare, or preserve the record in the form and manner prescribed by the Commission, or (4) does not comply with section 10921 of this title, is liable to the United States Government for a civil penalty of not more than \$500 for each violation and for not more than \$250 for each additional day the violation continues.
- Ante*, p. 1361. (h) (1) Trial in a civil action under subsections (a)-(f) of this section is in the judicial district in which the carrier has its principal
- Ante*, p. 1409.

operating office or in a district through which the railroad of the carrier runs.

(2) Trial in a civil action under subsection (g) of this section is in the judicial district in which (A) the motor carrier or broker has its principal office, (B) the motor carrier or broker was authorized to provide transportation under this subtitle when the violation occurred, (C) the violation occurred, or (D) the offender is found. Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

§ 11902. Civil penalty for accepting rebates from common carrier 49 USC 11902.

A person (1) delivering property to a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title for transportation under this subtitle or for whom that carrier will transport the property as consignor or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country, and (2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff filed with the Commission under subchapter IV of chapter 107 of this title, is liable to the United States Government for a civil penalty in an amount equal to 3 times the amount of money that person accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.

Ante, p. 1394.

§ 11903. Rate, discrimination, and tariff violations

49 USC 11903.

(a) A person that knowingly offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a common carrier subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title (1) at less than the rate in effect under chapter 107 of this title, or (2) by practicing discrimination, shall be fined at least \$1,000 but not more than \$20,000, imprisoned for not more than 2 years, or both.

Ante, p. 1359.

Ante, p. 1371.

(b) A carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to the jurisdiction of the Commission under that chapter, that willfully does not file and publish its rates or tariffs as required under chapter 107 of this title or observe those tariffs until changed under law, shall be fined at least \$1,000 but not more than \$20,000, imprisoned for not more than 2 years, or both.

(c) When acting in the scope of their employment, the actions and omissions of persons acting for or employed by a carrier or shipper that is subject to subsection (a) or (b) of this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

(d) Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

§ 11904. Additional rate and discrimination violations

49 USC 11904.

(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under sub-

Ante, p. 1359.

chapter I of chapter 105 of this title, and when that carrier is a corporation, an officer, employee, or agent of the corporation, that by any means knowingly and willfully assists a person in getting, or willingly permits a person to get, transportation provided under this subtitle for property at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

Ante, p. 1371.

(2) A person, or officer or agent of the person, that (A) delivers property for transportation under this subtitle to a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or for whom that carrier transports property as consignor or consignee, and (B) knowingly and willfully by any means gets or attempts to get that property transported at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

(3) A person, or an officer or agent of a corporation or company that by payment of anything of value, solicitation, or in any other way, induces or attempts to induce a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, or any of its officers or agents, to discriminate unreasonably against another consignor or consignee in the transportation of property shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

Ante, p. 1361.

(b) A person, or an officer, employee, or agent of that person, that (1) knowingly offers, grants, gives, solicits, accepts, or receives a rebate, concession, or discrimination in violation of a provision of this subtitle related to motor carrier transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or (2) by any means knowingly and willfully assists or permits another person to get transportation that is subject to the jurisdiction of the Commission under that subchapter at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined at least \$200 but no more than \$500 for the first violation and at least \$250 but not more than \$2,000 for a subsequent violation.

Ante, p. 1365.

(c) (1) A water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, or an officer, agent, or employee of that carrier, that knowingly and willfully by any means offers, grants, or gives, or intentionally permits a person to get, transportation provided under that subchapter at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than \$5,000.

(2) A person that knowingly and willfully by any means solicits, accepts, or receives transportation provided under subchapter III of chapter 105 of this title at less than the rate in effect for that transportation under chapter 107 of this title, shall be fined not more than \$5,000.

(3) Trial in a criminal action under this subsection is in the judicial district in which any part of the violation is committed.

Ante, p. 1369.

(d) (1) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, or an officer, agent, or employee of that freight forwarder, that knowingly and willfully assists a person in getting, or willingly permits a person to get, service provided under that subchapter at less

than the rate in effect for that service under chapter 107 of this title, shall be fined not more than \$500 for the first violation and not more than \$2,000 for a subsequent violation.

Ante, p. 1371.

(2) A person that knowingly and willfully by any means gets, or attempts to get, service provided under subchapter IV of chapter 105 of this title at less than the rate in effect for that service under chapter 107 of this title, shall be fined not more than \$500 for the first violation and not more than \$2,000 for a subsequent violation.

Ante, p. 1369.

§ 11905. Transportation of passengers without charge

49 USC 11905.

A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title that provides transportation of passengers without charge except as provided in section 10721(b), 10722 (c) and (d) (if the transportation is for its employees on sleeping and express cars or linemen of telegraph and telephone companies), 10723(a) (1) (other than paragraph (1)(A) of that subsection when transportation is arranged by a municipal government), or 10724(a) of this title, shall be fined at least \$100 but not more than \$2,000. An individual who uses a free ticket for, or accepts transportation subject to the jurisdiction of the Commission under those subchapters, except as provided in those sections, shall be fined at least \$100 but not more than \$2,000.

Ante, pp. 1359, 1361, 1365.

Ante, p. 1383.

Ante, p. 1384.

Ante, p. 1385.

Ante, p. 1386.

§ 11906. Evasion of regulation of motor carriers and brokers

49 USC 11906.

A person, or an officer, employee, or agent of that person that by any means knowingly and willfully tries to evade regulation provided under this subtitle for motor carriers or brokers shall be fined at least \$200 but not more than \$500 for the first violation and at least \$250 but not more than \$2,000 for a subsequent violation.

§ 11907. Interference with railroad car supply

49 USC 11907.

(a) A person that offers or gives anything of value to another person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title intending to influence an action of that other person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property, or because of the action of that other person, shall be fined not more than \$1,000, imprisoned for not more than 2 years, or both.

(b) A person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that solicits, accepts, or receives anything of value (1) intending to be influenced by it in an action of that person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property, or (2) because of the action of that person, shall be fined not more than \$1,000, imprisoned for not more than 2 years, or both.

§ 11908. Abandonment of service by freight forwarder

49 USC 11908.

A freight forwarder controlled by or under common control with a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title, or a director, officer, receiver, operating trustee, lessee, agent, or employee of that freight forwarder or common carrier, that knowingly authorizes or permits a violation of section 10933 of this title, shall be fined not more than \$5,000.

Ante, p. 1418.

49 USC 11909. § 11909. Record keeping and reporting violations

Ante, p. 1425.*Ante*, p. 1359.

(a) A person required to make a report to the Interstate Commerce Commission, or make, prepare, or preserve a record, under subchapter III of chapter 111 of this title about transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that knowingly and willfully (1) makes a false entry in the report or record, (2) destroys, mutilates, changes, or by another means falsifies the record, (3) does not enter business related facts and transactions in the record, (4) makes, prepares, or preserves the record in violation of a regulation or order of the Commission, or (5) files a false report or record with the Commission, shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

Ante, p. 1361.

(b) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle about transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, that (1) willfully does not make that report, (2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record with the Commission, (6) knowingly and willfully makes a false or incomplete entry in that record about a business related fact or transaction, or (7) knowingly and willfully makes, prepares, or preserves a record in violation of a regulation or order of the Commission, shall be fined not more than \$5,000.

Ante, p. 1365.

(c) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle about transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, or an officer, agent, or employee of that person, that (1) willfully does not make that report, (2) willfully does not specifically, completely and truthfully answer that question in 30 days from the date the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) willfully falsifies, destroys, mutilates, or changes that report, or record, (5) willfully makes a false or incomplete entry in the record about a fact or transaction required under this subtitle, (6) willfully makes, prepares, or preserves a record in violation of a regulation or order of the Commission, or (7) knowingly and willfully files a false report or record with the Commission, shall be fined not more than \$5,000. Trial in a criminal action under this subsection is in the judicial district in which any part of the violation is committed.

Ante, p. 1369.

(d) A freight forwarder, or an officer, agent, or employee of that freight forwarder, required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle about transportation subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title that (1) willfully does not make that report, (2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) knowingly and willfully

falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record with the Commission, (6) knowingly and willfully makes a false or incomplete entry in that record about a fact or transaction related to the business of that freight forwarder, or (7) knowingly and willfully makes, prepares, or preserves a record in violation of a regulation or order of the Commission, shall be fined not more than \$5,000.

§ 11910. Unlawful disclosure of information

49 USC 11910.

(a) (1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, or an officer, agent, or employee of that carrier, or another person authorized to receive information from that carrier, that knowingly discloses to another person, except the shipper or consignee, or a person who solicits or knowingly receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under this subtitle without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, shall be fined not more than \$1,000.

Ante, p. 1359.

(2) A motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not knowingly disclose to another person, except the shipper or consignee, and another person may not solicit, or knowingly receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this subtitle without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

Ante, p. 1361.

(3) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, or an officer, receiver, trustee, lessee, agent, or employee of that carrier, or another person authorized by that carrier or person to receive information from that carrier, that knowingly and willfully discloses to another person, except the shipper or consignee, or a person that solicits or knowingly and willfully receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under that subchapter without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee, shall be fined not more than \$2,000. Trial in a criminal action under this paragraph is in the judicial district in which any part of the violation is committed.

Ante, p. 1365.

(4) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, or an officer, agent, or employee of that freight forwarder, or another person authorized by that freight forwarder, or person to receive information, who knowingly and willfully discloses to another person, except the shipper or consignee, or a person that solicits or knowingly and willfully receives (A) information about the nature,

Ante, p. 1369.

kind, quantity, destination, consignee, or routing of property tendered or delivered to that forwarder for service provided under that subchapter without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, shall be fined not more than \$100 for the first violation and not more than \$500 for a subsequent violation. A separate violation occurs each day the violation continues.

Ante, p. 1359.

(b) This subtitle does not prevent a carrier or broker providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

Ante, p. 1426.

(c) An employee of the Commission delegated to make an inspection or examination under section 11144 of this title who knowingly discloses information acquired during that inspection or examination, except as directed by the Commission, a court, or a judge of that court, shall be fined not more than \$500, imprisoned for not more than 6 months, or both.

49 USC 11911.

§ 11911. Issuance of securities; disposition of funds; restriction on ownership

Ante, p. 1428.

Ante, p. 1430.

(a) A director, officer, attorney, or agent of a carrier defined in section 11301(a)(1) of this title or of a person to which that section is made applicable by section 11302(a) of this title that knowingly agrees to or concurs in (1) an issue of securities or assumption of obligations or liability in violation of section 11301 of this title, (2) a disposition of securities in violation of an order of the Interstate Commerce Commission, or (3) an application not authorized by the Commission of the funds derived by the carrier through a disposition of securities shall be fined at least \$1,000 but not more than \$10,000, imprisoned for at least one year but not more than 3 years, or both.

Ante, p. 1433.

(b) A person that violates section 11322 of this title shall be fined at least \$1,000 but not more than \$10,000, imprisoned for at least one year but not more than 3 years, or both.

49 USC 11912.

§ 11912. Consolidation, merger, and acquisition of control: violation by a person not a carrier

Ante, pp.
1434-1439.

A person, other than a common carrier, that violates section 11343, 11344, 11345, 11346, or 11347 of this title shall be fined not more than \$5,000.

§ 11913. Disobedience to subpoenas

49 USC 11913.

A person not obeying a subpoena or requirement of the Interstate Commerce Commission to appear and testify or produce records shall be fined at least \$100 but not more than \$5,000, imprisoned for not more than one year, or both.

§ 11914. General criminal penalty when specific penalty not provided

49 USC 11914.

(a) When another criminal penalty is not provided under this chapter, a common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, and when that carrier is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation that, alone or with another person, willfully violates this subtitle or an order prescribed under this subtitle, shall be fined not more than \$5,000. However, if the violation is for discrimination in rates charged for transportation, the person may be imprisoned for not more than 2 years in addition to being fined under this subsection. A separate violation occurs each day a violation of section 11321 (a) or 11342 of this title continues.

Ante, p. 1359.

(b) When another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates a provision of this subtitle or a regulation or order prescribed under this subtitle, or a condition of a certificate or permit issued under this subtitle related to transportation that is subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, shall be fined at least \$100 but not more than \$500 for the first violation and at least \$200 but not more than \$500 for a subsequent violation. A separate violation occurs each day the violation continues.

Ante, pp. 1432, 1434.

(c) When another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates a provision of this subtitle or a regulation or order prescribed under this subtitle, or a condition of a certificate or permit issued under this subtitle related to transportation that is subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, shall be fined not more than \$500. A separate violation occurs each day the violation continues. Venue in a criminal action under this subsection is in the judicial district in which any part of the violation was committed.

Ante, p. 1361.

(d) When another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates a provision of this subtitle or a regulation or order prescribed under this subtitle or a condition of a permit issued under this subtitle related to service that is subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, shall be fined not more than \$100 for the first violation and not more than \$500 for a subsequent violation. A separate violation occurs each day the violation continues.

Ante, p. 1365.*Ante*, p. 1370.

49 USC 11915. **§ 11915. Punishment of corporation for violations committed by certain individuals**

Ante, p. 1359.

An act or omission that would be a violation of this subtitle if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title that is a corporation is also a violation of this subtitle by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.

49 USC 11916. **§ 11916. Conclusiveness of rates in certain prosecutions**

Ante, p. 1371.

When a carrier files with the Interstate Commerce Commission or publishes a particular rate under chapter 107 of this title or participates in one of those rates, the published or filed rate is conclusive proof against that carrier, its officers, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 11902 or 11903 of this title. A departure, or offer to depart, from that rate is a violation of those sections.

CONFORMING AND TECHNICAL PROVISIONS

SEC. 2. (a) (1) Title 18, United States Code, is amended—

(A) by striking out of the first definition of section 831 “common, contract, or private carrier, or freight forwarder as those terms are used in the Interstate Commerce Act, as amended” and substituting “common, contract, or motor private carrier, as those terms are defined in section 10102 of title 49”; and

(B) by striking out of section 835(c) “by the Interstate Commerce Act” and substituting “under subtitle IV of title 49”.

(2) The Internal Revenue Code of 1954 (26 U.S.C. 1) is amended—

26 USC 48.

(A) by striking out of section 48(a) (2) (B) (ii) “subject to part I of the Interstate Commerce Act” and substituting “providing transportation subject to subchapter I of chapter 105 of title 49”;

26 USC 185.

(B) by striking out of section 185(e) (3) (B) “section 19a of part I of the Interstate Commerce Act (49 U.S.C. 19a)” and “such section 19a” and substituting “subchapter V of chapter 107 of title 49” and “such subchapter V”, respectively;

26 USC 250.

(C) by striking out of section 250(a) (1) “common carrier by railroad (as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)))” and substituting “rail carrier (as defined in section 10102(17) of title 49)”;

26 USC 281.

(D) by striking out of section 281(d) (1) (A) “subject to part I of the Interstate Commerce Act (49 U.S.C. 1 and following)” and substituting “providing transportation subject to subchapter I of chapter 105 of title 49”;

(E) by striking out of section 281(d) (1) (B) “subject to part I of the Interstate Commerce Act” and substituting “providing transportation subject to subchapter I of chapter 105 of title 49”;

(F) by striking out of section 354(c) "section 20b of the Interstate Commerce Act" and substituting "subchapter IV of chapter 113 of title 49"; 26 USC 354.

(G) by striking out of section 3231(g) "express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1)" and substituting "express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49"; and 26 USC 3231.

(H) by striking out of section 6362(f) (9) "26, 226A, or 324 of the Interstate Commerce Act" and substituting "section 11504 of title 49". 26 USC 6362.

(3) Title 28, United States Code, is amended—

(A) by striking out of section 1445(b) "section 20 of Title 49" and substituting "section 11707 of title 49";

(B) by striking out of section 2321(c) "the cases and proceedings under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)" and substituting "enforcement actions and actions to collect civil penalties under subtitle IV of title 49"; and

(C) by striking out of section 2323 "actions under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)" and substituting "enforcement actions and actions to collect civil penalties under subtitle IV of title 49".

(4) Title 39, United States Code, is amended—

(A) by striking out of section 5201(2) "motor carrier, or an express company" and substituting "motor common carrier, or express carrier";

(B) by striking out section 5201(5) and substituting the following:

"Motor common carrier."

"(5) 'motor common carrier' means a motor common carrier, except a passenger-carrying motor vehicle of such a carrier, within the meaning of section 10102(11) of title 49, that holds a certificate of public convenience and necessity issued by the Commission;"

(C) by striking out of section 5201(6) "company" and "section 1(3) of title 49" and substituting "carrier" and "section 10102(7)", respectively;

(D) by striking out of section 5203 "motor carrier" each time it appears and substituting "motor common carrier" in each place; and

(E) by striking out of section 5215(a) "motor carrier" and substituting "motor common carrier".

(5) Section 308(c)(1) of title 44, United States Code, is amended by striking out "section 66 of title 49" and substituting "section 244 of title 31".

49 USC 11503
note. (b) Section 11503 of title 49, as stated in the first section of this Act, is effective after February 4, 1979.

LEGISLATIVE PURPOSE AND CONSTRUCTION

49 USC prec.
10101 note.
Ante, pp. 1337,
1464.

SEC. 3. (a) Sections 1 and 2 of this Act restate, without substantive change, laws enacted before May 16, 1978, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after May 15, 1978, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency.

(b) A reference to a law replaced by sections 1 and 2 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) An order, rule, or regulation in effect under a law replaced by sections 1 and 2 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by sections 1 and 2 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.

(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

REPEALS

49 USC prec.
10101 note.

SEC. 4. (a) The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed except as provided in subsection (c) of this section and except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large	
			Volume	Page
1887 Feb. 4	104.....	(less 25, 203(a) (22), (23), 204(a)(1) ("qualifications" through period), (a)(2) ("qualifications" through period), (a)(3), (a)(3a), (a)(5), 220(f), 226).	24	379.
1889 Mar. 2	382..... 411.....	1 (proviso).....	25 25	855. 954.
1891 Feb. 10	128.....		26	743.
1893 Feb. 11	83.....		27	443.
1896 Feb. 8	61.....		28	643.
1903 Feb. 10	708.....		32	847.
1906 Mar. 7	P. R. 8.....		34	823.
Mar. 21	P. R. 11.....		34	824.
June 29	3591.....		34	584.
1908 Apr. 13	143.....		35	60.
1909 Feb. 25	193.....		35	648.
1910 June 18	309.....		36	539.
1912 Aug. 24	390.....	11 (less last par. on p. 567).....	37	566.
1913 Mar. 1	92.....		37	701.
Oct. 22	32.....	1 (last full par. on p. 219 and all language before the heading "United States Courts" on p. 221).	38	219, 221.
1914 Aug. 1	223.....	1 (5th full par.).....	38	627.
1915 Mar. 4	176.....		38	1196.
1916 Aug. 9	301.....		39	441.
29	417.....	1 (2d full par.).....	39	604.
1917 May 29	23.....		40	101.
Aug. 9	50.....		40	270.
10	51.....		40	272.
1920 Feb. 28	91.....	(less 1, 213, 441 "Sec. 26," 500).....	41	456.
May 8	172.....	1 (1st par.).....	41	590.
1921 Feb. 26	72.....		41	1145.
27	81.....		41	1149.
June 10	20.....		42	27.
1922 Feb. 24	70.....		42	393.
June 7	210.....		42	624.
Aug. 18	280.....		42	827.
Sept. 22	413.....		42	1025.
1923 Mar. 3	233.....		42	1443.
1924 June 7	325.....		43	633.
1925 Jan. 30	120.....		43	801.
1926 July 3	761.....		44	835.

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large	
			Volume	Page
1987				
Feb. 26	217		44	1247.
Mar. 4	510	(less 6)	44	1446.
1989				
Jan. 19	79		45	1084.
1990				
Apr. 23	208		46	251.
1992				
Mar. 15	78		47	65.
1993				
Feb. 28	136		47	1368.
June 16	91		48	211.
1994				
June 13	498		48	954.
19	648	1 (2d full par.)	48	1056.
	652	602(b)	48	1102.
1995				
Feb. 2	3	3	49	19.
May 23	136		49	287.
June 14	247		49	376.
July 16	383		49	481.
Aug. 9	498	(less 1 "Sec. 204(a)(1) ('qualifications' through period), (a)(2) ('qualifications' through period), (a)(3), (a)(5), 225'")	49	543.
12	509		49	607.
1997				
July 5	432		50	475.
Aug. 25	776		50	809.
1998				
June 23	601	1107(j)	52	1029.
29	811		52	1236.
1940				
Jan. 7	938		54	1226.
Sept. 18	722	(less 14(b), 20(b)(4), 24 "Sec. 220 (f)", 322, 331)	54	898.
1949				
Mar. 27	199	101-103 (title I)	56	176.
May 16	318		56	284.
Aug. 7	552		56	746.
1943				
Nov. 12	299		57	590.
1944				
Sept. 27	423		58	751.
1945				
May 16	128		59	169.
Dec. 12	573		59	606.
1946				
Feb. 20	32		60	21.
1948				
Apr. 9	180	(less 3)	62	162.
June 3	386		62	295.
12	457		62	386.
17	491		62	472.
24	622		62	602.
1949				
May 24	139	133	63	108.
June 29	272		63	280.
July 26	361		63	479.
Aug. 2	379		63	485.
1960				
Sept. 1	835		64	574.
Dec. 20	1140		64	1113.
1962				
June 27	477	402(g)	66	277.
July 3	570	1(a)(26), (26)	66	332.
9	599		66	479.
10	648		66	542.
16	881		66	724.
1963				
June 30	165		67	115.
July 31	292		67	244.

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large	
			Volume	Page
1964				
July 22	563.....	.....	68	526.
1966				
July 27	759.....	.....	70	702.
Aug. 3	928.....	.....	70	983.
1967				
July 11	85-99.....	.....	71	292.
Aug. 13	85-124.....	.....	71	343.
14	85-135.....	4.....	71	352.
16	85-150.....	.....	71	369.
22	85-163.....	.....	71	411.
28	85-176.....	.....	71	452.
31	85-246.....	.....	71	564.
Sept. 7	85-309.....	.....	71	631.
1968				
Aug. 12	85-625.....	.....	72	568.
23	85-728.....	.....	72	812.
26	85-762.....	1.....	72	859.
Sept. 2	85-857.....	13(a).....	72	1264.
1969				
June 11	86-507.....	1(38).....	74	202.
July 12	86-615.....	.....	74	382.
1961				
Apr. 1	87-16.....	.....	75	41.
Sept. 14	87-247.....	.....	75	517.
1962				
Aug. 24	87-595.....	.....	76	397.
Sept. 27	87-707.....	.....	76	635.
Oct. 15	87-805.....	.....	76	911.
1963				
Dec. 17	88-208.....	.....	77	402.
1965				
July 24	89-86.....	.....	79	263.
27	89-93.....	.....	79	284.
Sept. 6	89-170.....	.....	79	648.
1966				
May 26	89-430.....	.....	80	168.
Oct. 15	89-670.....	8(d).....	80	943.
Nov. 10	84-804.....	.....	80	1521.
1968				
July 26	90-433.....	.....	82	448.
Oct. 17	90-586.....	1.....	82	1149.
1970				
Oct. 15	91-452.....	243-245.....	84	931.
Dec. 23	91-569.....	1-3.....	84	1499.
28	91-590.....	.....	84	1587.
1972				
July 7	92-338.....	.....	86	423.
13	92-348.....	5, 6.....	86	463.
1973				
July 10	93-69.....	201-202 (title II).....	87	166-168.
Dec. 27	93-201.....	.....	87	838.
1974				
Jan. 2	93-236.....	205, 601(e).....	87	993, 1021.
Feb. 8	93-249.....	.....	88	11.
Oct. 28	93-496.....	14.....	88	1532.
Dec. 21	93-528.....	6(b).....	88	1709.
1975				
Jan. 2	93-585.....	9.....	88	1918.
Feb. 28	94-5.....	3.....	89	7.
1976				
Feb. 5	94-210.....	201, 202 (less (f)), 203-212, 301-307, 308(a)(3), 309, 310, 312, 402, 403, 801, 802, 804 "Sec. 304(j)", 809(c).	90	34-38, 39-56, 57-60, 62-66, 125-130, 139, 146.
Apr. 21	94-273.....	11(4).....	90	378.
Oct. 19	94-555.....	206, 218, 220(l)-(o).....	90	2621, 2628, 2630.
1978				
Feb. 15	95-231.....	.....	92	29.

Reorganization Plans

Year	Plan No.	Section	Statutes at Large	
			Volume	Page
1969.....	1	-----	88	859.

49 USC prec.
10101 note.

(c) The laws specified in the schedule in subsection (b) of this section, as they existed on October 1, 1977, are not repealed to the extent—

(1) those laws (A) vested functions in the Interstate Commerce Commission, or in the chairman or members of the Commission, related to the transportation of oil by pipeline, and (B) vested functions and authority in the Commission, or an officer or component of the Commission, related to the establishment of rates or charges for the transportation of oil by pipeline or the valuation of any such pipeline; and

(2) those functions and authority were transferred by sections 306 and 402(b) of the Department of Energy Organization Act (91 Stat. 581, 584, 42 U.S.C. 7155, 7172(b)).

Effective date.
49 USC prec.
10101 note.
49 USC 1 note,
1020 note.

(d) The repeals, by subsection (b) of this section, of section 1(a) (25), (26) of the Act of July 3, 1952, chapter 570, the Act of June 30, 1953, chapter 165, and the Act of July 31, 1953, chapter 169, are effective on September 14, 1978.

Approved October 17, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1395 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 124 (1978):

Sept. 19, considered and passed House.

Sept. 25, considered and passed Senate, amended.

Sept. 26, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 42:
Oct. 18, Presidential statement.