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TITLE 48—TERRITORIES AND INSULAR POSSESSIONS
TO
TITLE 50—WAR AND NATIONAL DEFENSE

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TITLE 49, APPENDIX—TRANSPORTATION

This Appendix consists of sections of former Title 49 that were not included in Title 49 as enacted by Pub. L. 95-473 and Pub. L. 97-449, and certain laws related to transportation that were enacted after Pub. L. 95-473. Sections from former Title 49 retain the same section numbers in this Appendix. For disposition of all sections of former Title 49, see Table at beginning of Title 49, Transportation.

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CHAPTER 1—INTERSTATE COMMERCE ACT, PART I; GENERAL PROVISIONS AND RAILROAD AND PIPE LINE CARRIERS

Sec.
1 to 23, 25. Repealed.
26. Safety appliances, methods, and systems.
(a) "Railroad" defined.
(b) Order to install systems, etc.; modification; negligence of railroad.
(c) Filing report on rules, standards, and instructions; time; modification.
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(e) Unlawful use of system, etc.
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(h) Penalties; enforcement.
26a to 27. Repealed.

§ 1. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470; Pub. L. 96-258, § 3(b), June 3, 1980, 94 Stat. 427

Section repealed subject to an exception related to transportation of oil by pipeline. Section 402 of Pub. L. 95-607, which amended par. (14) of this section by adding subdiv. (b) and redesignating existing subdiv. (b) as (c) subsequent to the repeal of this section by Pub. L. 95-473, was repealed by Pub. L. 96-258. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 1. Regulation in general; car service; alteration of line

(1) Carriers subject to regulation

The provisions of this chapter shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) Repealed. June 19, 1934, ch. 652, title VI, § 602(b), 48 Stat. 1102;

from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only insofar as such transportation takes place within the United States.

(2) Transportation subject to regulation

The provisions of this chapter shall also apply to such transportation of passengers and property, but only insofar as such transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering; storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid, except as otherwise provided in this chapter;

(b) Repealed. June 19, 1934, ch. 652, title VI, § 602(b), 48 Stat. 1102.

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this chapter except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(3) Definitions

(a) The term "common carrier" as used in this chapter shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this chapter it shall be held to mean "common carrier." The term "railroad" as used in this chapter shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this chapter shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term "person" as used in this chapter includes an individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes a trustee, receiver, assignee, or personal representative thereof.

(b) For the purposes of sections 5, 12(1), 20, 304(a)(7), 310, 320, 904(b), 910, and 913 of this Appendix, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

(4) Duty to furnish transportation and establish through routes; division of joint rates

It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this chapter to establish reasonable through routes with common carriers by water subject to chapter 12 of this Appendix, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

(5) Just and reasonable charges; applicability; criteria for determination

(a) All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful. The provisions of this subdivision shall not apply to common carriers by railroad subject to this chapter.

(b) Each rate for any service rendered or to be rendered in the transportation of persons or property by any common carrier by railroad subject to this chapter shall be just and reasonable. A rate that is unjust or unreasonable is prohibited and unlawful. No rate which contributes or which would contribute to the going concern value of such a carrier shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate is below a just or reasonable minimum for the service rendered or to be rendered. A rate which equals or exceeds the variable costs (as determined through formulas prescribed by the Commission) of providing a service shall be presumed, unless such presumption is rebutted by clear and convincing evidence, to contribute to the going concern value of the carrier or carriers proposing such rate (hereafter in this paragraph referred to as the "proponent carrier"). In determining variable costs, the Commission shall, at the request of the carrier proposing the rate, determine only those costs of the carrier proposing the rate and only those costs of the specific service in question, except where such specific data and cost information is not available. The Commission shall not include in variable cost any expenses which do not vary directly with the level of service provided under the rate in question. Notwithstanding any other provision of this chapter, no rate shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate exceeds a just or reasonable maximum for the service rendered or to be rendered, unless the Commission has first found that the proponent carrier has market dominance over such service. A finding that a carrier has market dominance over a service shall not create a presumption that the rate or rates for such service exceed a just and reasonable maximum. Nothing in this paragraph shall prohibit a rate increase from a level which reduces the going concern value of the proponent carrier to a level which contributes to such going concern value and is otherwise just and reasonable. For the purposes of the preceding sentence, a rate increase which does not raise a rate above the incremental costs (as determined through formulas prescribed by the Commission) of rendering the service to which such rate applies shall be presumed to be just and reasonable.

(c) As used in this chapter, the terms—

(i) "market dominance" refers to an absence of effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies; and

(ii) "rate" means any rate or charge for the transportation of persons or property.

(d) Within 240 days after February 5, 1976, the Commission shall establish, by rule, standards and procedures for determining, in accordance with section 15(9) of this Appendix, whether and when a carrier possesses market dominance over a service rendered or to be rendered at a particular rate or rates. Such rules shall be designed to provide for a practical determination without administrative delay. The Commission shall solicit and consider the recommendations of the Attorney General and of the Federal Trade Commission in the course of establishing such rules.

(5½) Exchange of services

Nothing in this Act shall be construed to prevent any common carrier subject to this Act from entering into or operating under any contract with any telephone, telegraph, or cable company, for the exchange of their services.

(6) Classification of property for transportation; regulations and practices; demurrage charges

It is made the duty of all common carriers subject to the provisions of this chapter to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this chapter which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this chapter upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful. Demurrage charges shall be computed, and rules and regulations relating to such charges shall be established, in such a manner as to fulfill the national needs with respect to (a) freight car utilization and distribution, and (b) maintenance of an adequate freight car supply available for transportation of property.

(7) Free transportation for passengers prohibited; exceptions; penalty

No common carrier subject to the provisions of this chapter, shall, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees, its officers, time inspectors, surgeons, physicians, and attorneys at law, and the families of any of the foregoing; to the executive officers, general chairmen, and counsel of employees' organizations when such organizations are authorized and designated to represent employees in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.]; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail-service employees and persons in charge of the mails when on duty and traveling to and from duty, and all duly accredited agents and officers of the United States Postal Service and the Railway Mail Service and post-office inspectors while traveling on official business, upon the exhibition of their credentials; to customs inspectors, and immigration officers; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided,* That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *And provided further,* That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this chapter: *Provided further,* That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and exemployees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died, while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than $100 nor more than $2,000, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in sections 41 to 43 of this Appendix.

(8) Transportation of commodity manufactured or produced by railroad forbidden

It shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

(9) Switch connections and tracks

Any common carrier subject to the provisions of this chapter, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on

application therefor in writing by any shipper or owner of such lateral, branch line railroad, such shipper or owner of such lateral branch line of railroad, may make complaint to the Commission, as provided in section 13 of this Appendix, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section 15 of this Appendix, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

(10) "Car service" defined

The term "car service" in this chapter shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this chapter.

(11) Duty to furnish car service; rules and regulations

It shall be the duty of every carrier by railroad subject to this chapter to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

(12) Distribution of coal cars; failure to prorate; penalty; applicability of unit-train and non-unit-train service; definition

It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States. In applying the provisions of this paragraph, unit-train service and non-unit-train service shall be considered separate and distinct classes of service, and a distinction shall be made between these two classes of service and between the cars used in each class of service; questions of the justness and reasonableness of, or discrimination or preference or prejudice or advantage or disadvantage in, the distribution of cars shall be determined within each such class and not between them, notwithstanding any other provision of section 1, 2, or 3 of this Appendix, and of section 41, 42, or 43 of this Appendix. Coal cars supplied by shippers or receivers shall not be considered a part of such carrier's fleet or otherwise counted in determining questions of distribution or car count under this paragraph or any provision of law referred to in this section. As used in this paragraph, the term "unit-train service", means the movement of a single shipment of coal of not less than 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, via one route.

(13) Rules and regulations as to car service to be filed, etc.

The Commission is authorized by general or special orders to require all carriers by railroad subject to this chapter, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for transportation, and be subject to any or all of the provisions of this chapter relating thereto.

(14) Establishment by Commission of rules, etc., as to car service; procedures applicable

(a) It is the intent of the Congress to encourage the purchase, acquisition, and efficient utilization of freight cars. In order to carry out such intent, the Commission may, upon complaint of an interested party or upon its own initiative without complaint, and after notice and an opportunity for a hearing, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this chapter, including (i) the compensation to be paid for the use of any locomotive, freight car, or other vehicle, (ii) the other terms of any contract, agreement, or arrangement for the use of any locomotive or other vehicle not owned by the carrier by which it is used (and whether or not owned by another carrier, shipper, or third party), and (iii) the penalties or other sanctions for nonobservance of such rules, regulations, or practices. In determining the rates of compensation to be paid for each type of freight car, the Commission shall give consideration to the transportation use of each type of freight car, to the national level of ownership of each such type of freight car, and to other factors affecting the adequacy of the national freight car supply. Such compensation shall be fixed on the basis of the elements of ownership expense involved in owning and maintaining each such type of freight car, including a fair return on the cost of such type of freight car (giving due consideration to current costs of capital, repairs, materials, parts, and labor). Such compensation may be increased by any incentive element which will, in the judgment of the Commission, provide just and reasonable compensation to 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 the national defense. The Commission shall not make any incentive element applicable to any type of freight car if the Commission finds that the supply of such type of freight car is adequate. The Commission may exempt such incentive element from the compensation to be paid by any carrier or group of carriers if the Commission finds that such an exemption is in the national interest.

(b) If the Commission finds, upon the petition of an interested party and after notice and a hearing on the record, that a common carrier by railroad subject to this part has materially failed to furnish safe and adequate car service as required by paragraph (11) of this section, the Commission may require such carrier to provide itself with such facilities and equipment as may be reasonably necessary to furnish such service, if the evidence of record establishes, and the Commission affirmatively finds, that—

(i) the provision of such facilities or equipment will not materially and adversely affect the ability of such carrier to otherwise provide safe and adequate transportation services;

(ii) the expenditure required for such facilities or equipment, including a return which equals such carrier's current cost of capital, will be recovered; and

(iii) the provision of such facilities or equipment will not impair the ability of such carrier to attract adequate capital.

(c) It shall be unlawful for any common carrier by railroad or express company, subject to this chapter, to make or enter into any contract, agreement, or arrangement with any person for the furnishing to or on behalf of such carrier or express company of protective service against heat or cold to property transport-

ed or to be transported in interstate or foreign commerce, or for any such carrier or express company to continue after April 1, 1941, as a party to any such contract, agreement, or arrangement unless and until such contract, agreement, or arrangement has been submitted to and approved by the Commission as just, reasonable, and consistent with the public interest: *Provided*, That if the Commission is unable to make its determination with respect to any such contract, agreement, or arrangement prior to said date, it may extend it to not later than October 1, 1941.

(15) Powers of Commission in case of emergency

Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine: (a) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; (c) to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; and (d) to give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them. In time of war or threatened war the President may certify to the Commission that it is essential to the national defense and security that certain traffic shall have preference or priority in transportation, and the Commission shall, under the power herein conferred, direct that such preference or priority be afforded.

(16) Rerouting of traffic on failure of initial carrier to serve public

(a) Whenever the Commission is of opinion that any carrier by railroad subject to this chapter is for any reason unable to transport the traffic offered it so as properly to serve the public, it may, upon the same procedure as provided in paragraph (15) of this section, make such just and reasonable directions with respect to the handling, routing, and movement of the traffic of such carrier and its distribution over other lines of roads, as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable.

(b) Whenever any carrier by railroad is unable to transport the traffic offered it because—

(1) its cash position makes its continuing operation impossible;

(2) it has been ordered to discontinue any service by a court; or

(3) it has abandoned service without obtaining a certificate from the Commission pursuant to this section;

the Commission may, upon the same procedure as provided in paragraph (15) of this section, make such just and reasonable directions with respect to the handling, routing, and movement of the traffic available to such carrier and its distribution over such carrier's lines, as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people subject to the following conditions:

(A) Such direction shall be effective for no longer than 60 days unless extended by the Commission for cause shown for an additional designated period not to exceed 180 days.

(B) No such directions shall be issued that would cause a carrier to operate in violation of the Federal Railroad Safety Act of 1970 [45 U.S.C. 431 et seq.] or that would substantially impair the ability of the carrier so directed to serve adequately its own patrons or to meet its outstanding common carrier obligations.

(C) The directed carrier shall not, by reason of such Commission direction, be deemed to have assumed or to become responsible for the debts of the other carrier.

(D) The directed carrier shall hire employees of the other carrier to the extent such employees had previously performed the directed service for the other carrier, and, as to such employees as shall be so hired, the directed carrier shall be deemed to have assumed all existing employment obligations and practices of the other carrier relating thereto, including, but not limited to, agreements governing rate of pay, rules and working conditions, and all employee protective conditions commencing with and for the duration of the direction.

(E) Any order of the Commission entered pursuant to this paragraph shall provide that if, for the period of its effectiveness, the cost, as hereinafter defined, of handling, routing, and moving the traffic of another carrier over the other carrier's lines of road shall exceed the direct revenues therefor, then upon request, payment shall be made to the directed carrier, in the manner hereinafter provided and within 90 days after expiration of such order, of a sum equal to the amount by which such cost has exceeded said revenues. The term "cost" shall mean those expenditures made or incurred in or attributable to the operations as directed, including the rental or lease of necessary equipment, plus an appropriate allocation of common expenses, overheads, and a reasonable profit. Such cost shall be then currently recorded by the carrier or carriers in such manner and on such forms as by general order may be prescribed by the Commission and shall be submitted to and subject to audit by the Commission. The Commission shall certify promptly to the Secretary of the Treasury the amount of payment to be made to said carrier or carriers under the provisions of this paragraph. Payments required to be made to a carrier under the provisions of this paragraph shall be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purpose of carrying out the provisions hereof.

(17) Directions of Commission as to car service; disobedience; rights of States; bribery

(a) The directions of the Commission as to car service and to the matters referred to in paragraphs (15) and (16) of this section may be made through and by such agents or agencies as the Commission shall designate and appoint for that purpose. It shall be the duty of all carriers by railroad subject to this chapter, and of their officers, agents, and employees, to obey strictly and conform promptly to such orders or directions of the Commission, and in case of failure or refusal on the part of any carrier, receiver, or operating trustee to comply with any such order or direction such carrier, receiver, or trustee shall be liable to a penalty of

not less than $100 nor more than $500 for each such offense and $50 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States: *Provided, however,* That nothing in this chapter shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except insofar as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this chapter and except as otherwise provided in this chapter.

(b) It shall be unlawful for any person to offer or give or cause or procure to be offered or given, directly or indirectly, any money, property, or thing of value, or bribe in any other form whatsoever, to any person acting for or employed by any carrier by railroad subject to this part with intent to influence his decision or action, or because of his decision or action, with respect to the supply, distribution, or movement of cars or other vehicles, or vessels, used in the transportation of property. It shall be unlawful for any person acting for or employed by any carrier by railroad subject to this chapter to solicit, accept, or receive, directly or indirectly, any money, property, or thing of value, or bribe in any other form whatsoever, with intent to be influenced thereby in his decision or action, or because of his decision or action, with respect to the supply, distribution, or movement of cars or other vehicles, or vessels, used in the transportation of property. Any person who violates the provisions of this subparagraph shall be deemed guilty of a misdemeanor and be subject for each offense to a fine of not more than $1,000, or imprisonment in the penitentiary for a term of not more than two years, or both such fine and imprisonment.

(18) Extension or addition of lines; certificate required; procedures applicable to application for certificate; petition or initiative of Commission; agreements for ownership or use of spur, etc., tracks; limitations on authority of Commission; injunctions and penalty for violations

(a) No carrier by railroad subject to this chapter shall—

(i) undertake the extension of any of its lines of railroad or the construction of any additional line of railroad;

(ii) acquire or operate any such extension or any such additional line; or

(iii) engage in transportation over, or by means of, any such extended or additional line of railroad,

unless such extension or additional line of railroad is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or will be enhanced by the construction and operation of such extended or additional line of railroad. Upon receipt of an application for such a certificate, the Commission shall (A) 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 such extended or additional line, (B) send an accurate and understandable summary of such application to a newspaper of general circulation in such affected area or areas with a request that such information be made available to the general public, (C) cause a copy of such summary to be published in the Federal Register, (D) take such other steps as it deems reasonable and effective to publicize such application, and (E) indicate in such transmissions and publications that each interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

(b) The Commission shall establish, and may from time to time amend, rules and regulations (as to hearings and other matters) to govern applications for, and the issuance of, any certificate required by subdivision (a). An application for such a certificate shall be submitted to the Commission in such form and manner and with such documentation as the Commission shall prescribe. The Commission may—

(i) issue such a certificate in the form requested by the applicant;

(ii) issue such a certificate with modifications in such form and subject to such terms and conditions as are necessary in the public interest; or

(iii) refuse to issue such a certificate.

(c) Upon petition or upon its own initiative, the Commission may authorize any carrier by railroad subject to this chapter to extend any of its lines of railroad or to take any other action necessary for the provision of adequate, efficient, and safe facilities for the performance of such carrier's obligations under this chapter. No authorization shall be made unless the Commission finds that the expense thereof will not impair the ability of such carrier to perform its obligations to the public.

(d) Carriers by railroad subject to this chapter may, notwithstanding this paragraph and section 5 of this Appendix, and without the approval of the Commission, enter into contracts, agreements, or other arrangements for the point [joint] ownership or joint use of spur, industrial, team, switching, or side tracks. The authority granted to the Commission under this paragraph shall not extend to the construction, acquisition, or operation of spur, industrial, team, switching, or side tracks if such tracks are located or intended to be located entirely within one State, and shall not apply to any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.

(e) Any construction or operation which is contrary to any provision of this paragraph, of any regulations promulgated under this paragraph, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed $5,000 on each person who knowingly authorizes, consents to, or permits any violation of this paragraph or of the conditions of a certificate issued under this paragraph.

(Feb. 4, 1887, ch. 104, pt. I, § 1, 24 Stat. 379; June 29, 1906, ch. 3591, § 1, 34 Stat. 584; Apr. 13, 1908, ch. 143, 35 Stat. 60; June 18, 1910, ch. 309, § 7, 36 Stat. 544; May 29, 1917, ch. 23, 40 Stat. 101; Feb. 28, 1920, ch. 91, §§ 400–403, 41 Stat. 474–479; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, §§ 2, 3(a), (b), 4, 54 Stat. 899–901; June 24, 1948, ch. 622, 62 Stat. 602; Aug. 2, 1949, ch. 379, § 1, 63 Stat. 485; June 27, 1952, ch. 477, title IV, § 402(g), 66 Stat. 277; Aug. 12, 1958, Pub. L. 85–625, § 3, 72 Stat. 570; May 26, 1966, Pub. L. 89–430, § 1, 80 Stat. 168; Jan. 2, 1974, Pub. L. 93–236, title VI, § 601(e), 87 Stat. 1021; Feb. 5, 1976, Pub. L. 94–210, title II, §§ 202(a), (b), 211, 212(a), title III, § 310, title VIII, § 801, 90 Stat. 34, 35, 46, 60, 125; Nov. 8, 1978, Pub. L. 95–607, title IV, § 402, 92 Stat. 3067.)

§ 1a. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 1a. Abandonment and discontinuance of rail service

(1) Authorization pursuant to certification by Commission; application and notice of intent required in accordance with rules and regulations; statutory provisions applicable; limitation on authority of Commission

No carrier by railroad subject to this chapter shall abandon all or any portion of any of its lines of railroad (hereafter in this section referred to as "abandonment") and no such carrier shall discontinue the operation of all rail service over all or any portion of any such line (hereinafter referred to as "discontinuance"), unless such abandonment or discontinuance is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or permit such abandonment or discontinuance. An application for such a certificate shall be submitted to the Commission, together with a notice of intent to abandon or discontinue, not less than 60 days prior to the proposed effective date of such abandonment or discontinuance, and shall be in accordance with such rules and regulations as to form, manner, content, and documentation as the Commission may from time to time prescribe. Abandonments and discontinuances shall be governed by the provisions of this section or by the provisions of any other applicable Federal statute, notwithstanding any inconsistent or contrary provision in any State law or constitution, or any decision, order, or procedure of any State administrative or judicial body. The authority granted to the Commission under this section shall not apply to (a) abandonment or discontinuance with respect to spur, industrial, team switching, or side tracks if such tracks are located entirely within one State, or (b) any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.

(2) Affidavit accompanying notice of intent; contents of affidavit and notice of intent

(a) Whenever a carrier submits to the Commission a notice of intent to abandon or discontinue, pursuant to paragraph (1) of this section, such carrier shall attach thereto an affidavit certifying that a copy of such notice (i) has been sent by certified mail to the chief executive officer of each State that would be directly affected by such abandonment or discontinuance, (ii) has been posted in each terminal and station on any line of railroad proposed to be so abandoned or discontinued, (iii) has been published for 3 consecutive weeks in a newspaper of general circulation in each county in which all or any part of such line of railroad is located, and (iv) has been mailed, to the extent practicable, to all shippers who have made significant use (as determined by the Commission in its discretion) of such line of railroad during the 12 months preceding such submission.

(b) The notice required under subdivision (a) of this paragraph shall include (i) an accurate and understandable summary of the carrier's application for a certificate of abandonment or discontinuance, together with the reasons therefor, and (ii) a statement indicating that each interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

(3) Investigation by Commission; prerequisites; effect; scope; procedures

During the 60-day period between the submission of a completed application for a certificate of abandonment or discontinuance pursuant to paragraph (1) of this section and the proposed effective date of an abandonment or discontinuance, the Commission shall, upon petition, or may, upon its own initiative, cause an investigation to be conducted to assist it in determining what disposition to make of such application. An order to the Commission to implement the preceding sentence must be issued and served upon any affected carrier not less than 5 days prior to the end of such 60-day period. If no such investigation is ordered, the Commission shall issue such a certificate, in accordance with this section, at the end of such 60-day period. If such an investigation is ordered, the Commission shall order a postponement, in whole or in part, in the proposed effective date of the abandonment or discontinuance. Such postponement shall be for such reasonable period of time as is necessary to complete such investigation. Such an investigation may include, but need not be limited to, public hearings at any location reasonably adjacent to the line of railroad involved in the abandonment or discontinuance application, pursuant to rules and regulations of the Commission. Such a hearing may be held upon the request of any interested party or upon the Commission's own initiative. The burden of proof as to public convenience and necessity shall be upon the applicant for a certificate of abandonment or discontinuance.

(4) Issuance of certificate; contents; taking effect of abandonment or discontinuance

The Commission shall, upon an order with respect to each application for a certificate of abandonment or discontinuance—

(a) issue such certificate in the form requested by the applicant if it finds that such abandonment or discontinuance is consistent with the public convenience and necessity. In determining whether the proposed abandonment is consistent with the public convenience and necessity, the Commission shall consider whether there will be a serious adverse impact on rural and community development by such abandonment or discontinuance;

(b) issue such certificate with modifications in such form and subject to such terms and conditions as are required, in the judgment of the Commission, by the public convenience and necessity; or

(c) refuse to issue such certificate.

Each such certificate which is issued by the Commission shall contain provisions for the protection of the interests of employees. Such provisions shall be at least as beneficial to such interests as provisions established pursuant to section 5(2)(f) of this Appendix and pursuant to section 565 of title 45. If such certificate is issued without an investigation pursuant to paragraph (3) of this section, actual abandonment or discontinuance may take effect, in accordance with such certificate, 30 days after the date of issuance thereof. If such a certificate is issued after an investigation pursuant to such paragraph (3), actual abandonment or discontinuance may take effect, in accordance with such certificate, 120 days after the date of issuance thereof.

(5) Diagram of transportation system directly or indirectly operated by carrier by railroad subject to this chapter; preparation, submission to Commission, and publication; contents; amendments; opposition to issuance or denial of certificate limited by diagram or amended diagram

(a) Each carrier by railroad subject to this chapter shall, within 180 days after the date of promulgation of regulations by the Commission pursuant to this section, prepare, submit to the Commission, and publish, a full and complete diagram of the transportation system operated, directly or indirectly, by such carrier. Each such diagram which shall include a detailed description of each line of railroad which is "potentially subject to abandonment", as such term is defined by the Commission. Such term shall be defined by the Commission by rules and such rules may include standards which vary by region of the Nation and by railroad or group of railroads. Each such diagram shall also identify any line of railroad as to which such carrier plans to submit an application for a certificate of abandonment or discontinuance in accordance with this section. Each such carrier shall submit to the Commission and publish, in accordance with regulations of the Commission, such amendments to such diagram as are necessary to maintain the accuracy of such diagram.

(b) The Commission shall not issue a certificate of abandonment or discontinuance with respect to a line of railroad if such abandonment or discontinuance is opposed by—

(i) a shipper or any other person who has made significant use (as determined by the Commission in its discretion) of such line of railroad during the 12-month period preceding the submission of an applicable application under paragraph (1) of this section; or

(ii) a State, or any political subdivision of a State, if such line of railroad is located, in whole or in part, within such State or political subdivision;

unless such line or railroad has been identified and described in a diagram or in an amended diagram which was submitted to the Commission under subdivision (a) of this paragraph at least 4 months prior to the date of submission of an application for such certificate.

(6) Findings by Commission of public convenience and necessity permitting abandonment or discontinuance; publication in Federal Register; further findings of offers of financial assistance postponing issuance of certificate of abandonment or discontinuance; duration of postponement

(a) Whenever the Commission makes a finding, in accordance with this section, that the public convenience and necessity permit the abandonment or discontinuance of a line or railroad, it shall cause such finding to be published in the Federal Register. If, within 30 days of such publication, the Commission further finds that—

(i) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(ii) it is likely that such proffered assistance would—

(A) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line; or

(B) cover the acquisition cost of all or any portion of such line of railroad;

the Commission shall postpone the issuance of a certificate of abandonment or discontinuance for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment or discontinuance, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect.

(b) A carrier by railroad subject to this chapter shall promptly make available, to any party considering offering financial assistance in accordance with subdivision (a) of this paragraph, its most recent reports on the physical condition of any line of railroad with respect to which it seeks a certificate of abandonment or discontinuance, together with such traffic, revenue, and other data as is necessary to determine the amount of assistance that would be required to continue rail service.

(7) Determination by Commission subsequent to findings of offers of financial assistance of extent avoidable costs of rail service and reasonable return on rail properties exceed operating revenues

Whenever the Commission finds, under paragraph (6)(a) of this section, that an offer of financial assistance has been made, the Commission shall determine the extent to which the avoidable cost of providing rail service plus a reasonable return on the value of the rail properties involved exceed the revenues attributable to the line of railroad or the rail service involved.

(8) Statutory provisions applicable to petitions filed and pending prior to February 5, 1976, or prior to promulgation of regulations by Commission

Petitions for abandonment or discontinuance which were filed and pending before the Commission as of February 5, 1976, or prior to the promulgation by the Commission of regulations required under this section shall be governed by the provisions of section 1 of this title which were in effect on February 5, 1976, except that paragraphs (6) and (7) of this section shall be applicable to such petitions.

(9) Injunctive relief; jurisdiction; parties; civil penalty

Any abandonment or discontinuance which is contrary to any provision of this section, of any regulation promulgated under this section, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed $5,000 on each person who knowingly authorizes, consents to, or permits any violation of this section or of any regulation under this section.

(10) Further findings by Commission of suitability of abandoned or discontinued properties for use for other public purposes; limitations on disposal subsequent to finding

In any instance in which the Commission finds that the present or future public convenience and necessity permit abandonment or discontinuance, the Commission shall make a further finding whether such properties are suitable for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Commission finds that the properties proposed to be abandoned are suitable for other public purposes, it shall order that such rail properties not be sold, leased, exchanged, or otherwise disposed of except in accordance with such reasonable terms and conditions as are prescribed by the Commission, including, but not limited to, a prohibition on any such disposal, for a period not to exceed 180 days after the effective date of the order permitting abandonment unless such properties have first been offered, upon reasonable terms, for acquiusition for public purposes.

(11) "Avoidable cost" and "reasonable return" defined

As used in this section:

(a) The term "avoidable cost" means all expenses which would be incurred by a carrier in providing a service which would not be incurred, in the case of discontinuance, if such service were discontinued or, in the case of abandonment, if the line over which such service was provided were abandoned. Such expenses shall include but are not limited to all cash inflows which are foregone and all cash outflows which are incurred by such carrier as a result of not discontinuing or not abandoning such service. Such foregone cash inflows and incurred outflows shall include (i) working capital and required capital expenditures, (ii) expenditures to eliminate deferred maintenance, (iii) the current cost of freight cars, locomotives and other equipment, and (iv) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes.

(b) The term "reasonable return" shall, in the case of a railroad not in reorganization, be the cost of capital to such railroad (as determined by the Commission), and, in the case of a railroad in reorganization, shall be the mean cost of capital of railroads

not in reorganization, as determined by the Commission.

(Feb. 4, 1887, ch. 104, pt. I, § 1a, as added and amended Feb. 5, 1976, Pub. L. 94-210, title VIII, §§ 802, 809(c), 90 Stat. 127, 146; Oct. 19, 1976, Pub. L. 94-555, title II, § 218, 90 Stat. 2628.)

§ 2. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 2. Special rates and rebates prohibited

If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

(Feb. 4, 1887, ch. 104, pt. I, § 2, 24 Stat. 379; Feb. 28, 1920, ch. 91, § 404, 41 Stat. 479; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

§ 3. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 3. Preferences; interchange of traffic; terminal facilities

(1) Undue preferences or prejudices prohibited

It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(1a) Export rates on farm commodities; Commission's power to carry out policy

It is declared to be the policy of Congress that shippers of wheat, cotton, and all other farm commodities for export shall be granted export rates on the same principles as are applicable in the case of rates on industrial products for export. The Commission is directed, on its own initiative or an application by interested persons, to make such investigations and conduct such hearings, and, after appropriate proceedings, to issue such orders, as may be necessary to carry out such policy.

(2) Payment of freight as prerequisite to delivery

No carrier by railroad and no express company subject to the provisions of this chapter shall deliver or relinquish possession at destination of any freight or express shipment transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges and to prevent unjust discrimination: *Provided,* That the provisions of this paragraph shall not be construed to prohibit any carrier or express company from extending credit in connection with rates and charges on freight or express shipments transported for the United States, for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia. Where carriers by railroad are instructed by a shipper or consignor to deliver property transported by such carriers to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in the property, and (b) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. An action for the enforcement of such liability may be begun within the period provided in paragraph (3) of section 16 of this Appendix or before the expiration of six months after final judgment against the carrier in an action against the consignee begun within the period provided in paragraph (3) of section 16 of this Appendix. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges, notwithstanding the foregoing provisions of this paragraph. An action for the enforcement of such liability may be begun within the period provided in paragraph (3) of section 16 of this Appendix or before the expiration of six months after final judgment against the carrier in an action against the beneficial owner named by the consignee begun within the period provided in paragraph (3) of section 16 of this Appendix. On shipments reconsigned or diverted by an agent who has furnished the carrier in the reconsignment or diversion order with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. If the reconsignor or diverter has given to the carrier erroneous information as to who the beneficial owner is, such reconsignor or diverter shall himself be liable for all such charges, and an action for the enforcement of his liability may be begun within the same period provided in the case of an action against a consignee who has given erroneous information as to the beneficial owner.

(3) Liability of shipper-consignee for freight where delivery is made to another party upon instruction

If a shipper or consignor of a shipment of property (other than a prepaid shipment) is also the consignee named in the bill of lading and, prior to the time of delivery, notifies, in writing, a delivering carrier by railroad or a delivering express company subject to

the provisions of this chapter, (a) to deliver such property at destination to another party, (b) that such party is the beneficial owner of such property, and (c) that delivery is to be made to such party only upon payment of all transportation charges in respect of the transportation of such property, and delivery is made by the carrier to such party without such payment, such shipper or consignor shall not be liable (as shipper, consignor, consignee, or otherwise) for such transportation charges but the party to whom delivery is so made shall in any event be liable for transportation charges billed against the property at the time of such delivery, and also for any additional charges which may be found to be due after delivery of the property, except that if such party prior to such delivery has notified in writing the delivering carrier that he is not the beneficial owner of the property, and has given in writing to such delivering carrier the name and address of such beneficial owner, such party shall not be liable for any additional charges which may be found to be due after delivery of the property; but if the party to whom delivery is made has given to the carrier erroneous information as to the beneficial owner, such party shall nevertheless be liable for such additional charges. If the shipper or consignor has given to the delivering carrier erroneous information as to who the beneficial owner is, such shipper or consignor shall himself be liable for such transportation charges, notwithstanding the foregoing provisions of this paragraph and irrespective of any provisions to the contrary in the bill of lading or in the contract of transportation under which the shipment was made. An action for the enforcement of such liability either against the party to whom delivery is made or the shipper or consignor may be begun within the period provided in paragraph (3) of section 16 of this Appendix, or before the expiration of six months after final judgment against the carrier in an action against either of such parties begun within the limitation period provided in paragraph (3) of section 16 of this Appendix. The term "delivering carrier" means the line-haul carrier making ultimate delivery.

(4) Interchange of traffic

All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water, subject to chapter 12 of this Appendix.

(5) Terminal facilities; use of and compensation for

If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a common carrier by railroad owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power by order to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any common carrier by railroad, by another such carrier or other such carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be.

(Feb. 4, 1887, ch. 104, pt. I, § 3, 24 Stat. 380; Feb. 28, 1920, ch. 91, § 405, 41 Stat. 479; Mar. 4, 1927, ch. 510, § 1, 44 Stat. 1447; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Aug. 12, 1935, ch. 509, 49 Stat. 607; Sept. 18, 1940, ch. 722, title I, § 5(a), (c)–(f), 54 Stat. 902; Aug. 2, 1949, ch. 379, § 2(a), 63 Stat. 485.)

§ 4. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 4. Long and short haul charges; competition with water routes

(1) Charges for long and short hauls and on through route; exemption

It shall be unlawful for any common carrier subject to this chapter or chapter 12 of this Appendix to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this chapter or chapter 12 of this Appendix, but this shall not be construed as authorizing any common carrier within the terms of this chapter or chapter 12 of this Appendix to charge or receive as great compensation for a shorter as for a longer distance: *Provided,* That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: *Provided further,* That any such carrier or carriers operating over a circuitous line or route may, subject only to the standards of lawfulness set forth in other provisions of this chapter or chapter 12 of this Appendix and without further authorization, meet the charges of such carrier or carriers of the same type operating over a more direct line or route, to or from the competitive points, provided that rates so established over circuitous routes shall not be evidence on the issue of the compensatory character of rates involved in other proceedings: *And provided further,* That tariffs proposing rates subject to the provision of this paragraph requiring Commission authorization may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice: *And provided further,* That the provisions of this para-

graph shall not apply to express companies subject to the provisions of this chapter, except that the exemption herein accorded express companies shall not be construed to relieve them from the operation of any other provision contained in this Act.

(2) Competition of railroads with water routes; change of rates

Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

(Feb. 4, 1887, ch. 104, pt. I, § 4, 24 Stat. 380; June 18, 1910, ch. 309, § 8, 36 Stat. 547; Feb. 28, 1920, ch. 91, § 406, 41 Stat. 480; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 6(a), 54 Stat. 904; July 11, 1957, Pub. L. 85-99, 71 Stat. 292; Sept. 27, 1962, Pub. L. 87-707, 76 Stat. 635.)

§ 5. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 5. Combinations and consolidations of carriers

(1) Pooling; division of traffic, service, or earnings

Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this Appendix, it shall be unlawful for any common carrier subject to this chapter, chapter 8, or chapter 12 of this Appendix to enter into any contract, agreement, or combination with any other such common carrier or carriers for the pooling or division of traffic, or of service, or of gross or net earnings, or of any portion thereof; and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separate offense: *Provided,* That whenever the Commission is of opinion, after hearing upon application of any such carrier or carriers or upon its own initiative, that the pooling or division, to the extent indicated by the Commission, of their traffic, service, or gross or net earnings, or of any portion thereof, will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition, the Commission shall by order approve and authorize, if assented to by all the carriers involved, such pooling or division, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises: *Provided further,* That any contract, agreement, or combination to which any common carrier by water subject to chapter 12 of this Appendix is a party, relating to the pooling or division of traffic, service, or earnings, or any portion thereof, lawfully existing on September 18, 1940, if filed with the Commission within six months after such date, shall continue to be lawful except to the extent that the Commission, after hearing upon application or upon its own initiative, may find and by order declare that such contract, agreement, or combination is not in the interest of better service to the public or of economy in operation, or that it will unduly restrain competition.

(2) Unifications, mergers, and acquisitions of control; procedures applicable

(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) of this paragraph or paragraph (3)–

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subdivision (a) of this paragraph, the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 305(e) of this Appendix), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) of this paragraph and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided,* That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6) of this section, is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(d) The Commission shall have authority in the case of a proposed transaction under this paragraph involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under

this paragraph except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph which will result in an increase of total fixed charges, except upon a specific findings by the Commission that such increase would not be contrary to public interest.

(f) As a condition of its approval, under this paragraph or paragraph (3), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Such arrangement shall contain provisions no less protective of the interests of employees than those imposed before February 5, 1976, pursuant to this subdivision and those established pursuant to section 565 of title 45. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may be entered into after September 18, 1940, by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

(g) In any case arising under this paragraph which involves a common carrier by railroad, the Commission shall—

(i) within 30 days after the date on which an application is filed with the Commission and after a certified copy of such application is furnished to the Secretary of Transportation, (A) publish notice thereof in the Federal Register, or (B) if such application is incomplete, reject such application by order, which order shall be deemed to be final under the provisions of section 17 of this Appendix;

(ii) provide that written comments on an application, as to which such notice is published, may be filed within 45 days after the publication of such notice in the Federal Register;

(iii) require that copies of any such comments shall be served upon the Secretary of Transportation and the Attorney General, each of whom shall be afforded 15 days following the date of receipt thereof to inform the Commission whether he will intervene as a party to the proceeding, and if so, to submit preliminary views on such application;

(iv) require that all other applications, which are inconsistent, in whole or in part, with such applications, and all petitions for inclusion in the transaction, shall be filed with the Commission and furnished to the Secretary of Transportation, within 90 days after the publication of notice of the application in the Federal Register;

(v) conclude any evidentiary proceedings within 240 days following the date of such publication of notice, except that in the case of an application involving the merger or control of two or more class I railroads, as defined by the Commission, the Commission shall conclude any evidentiary proceedings not more than 24 months following the date upon which notice of the application was published in the Federal Register; and

(vi) issue a final decision within 180 days following the date upon which the evidentiary proceeding is concluded.

If the Commission fails to issue a decision which is final within the meaning of section 17 of this Appendix within such 180-day period, it shall notify the Congress in writing of such failure and the reasons therefor. If the Commission determines that the due and timely execution of its functions under this paragraph so requires, or that an application brought under this paragraph is of major transportation importance, it may order that the case be referred directly (without an initial decision by a division, individual Commissioner, board, or administrative law judge) to the full Commission for a decision which is final within the meaning of section 17 of this Appendix.

(h) The Secretary of Transportation may propose any modification of any transaction governed by this paragraph which involves a carrier by railroad. The Secretary shall have standing to appear before the Commission in support of any such proposed modification.

(3) Expedited merger, consolidation, etc., procedure; applicability; prerequisites

(a) If a merger, consolidation, unification or coordination project (as described in section 5(c) of the Department of Transportation Act [now 49 U.S.C. 333(c)]), joint use of tracks or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to this chapter, is proposed by an eligible party in accordance with subdivision (b) of this paragraph during the period beginning on February 5, 1976, and ending on December 31, 1981, the party seeking authority for the execution or implementation of such transaction may utilize the procedure set forth in this paragraph or in paragraph (2) of this section.

(b) Any transaction described in subdivision (a) of this paragraph may be proposed to the Commission by—

(i) the Secretary of Transportation (hereafter in this paragraph referred to as the "Secretary"), with the consent of the common carriers by railroad subject to this chapter which are parties to such transaction; or

(ii) any such carrier which, not less than 6 months prior to such submission to the Commission, submitted such proposed transaction to the Secretary for evaluation pursuant to subdivision (f) of this paragraph.

(c) Whenever a transaction described in subdivision (a) of this paragraph is proposed under this paragraph, the proposing party shall submit an application for approval thereof to the Commission, in accordance with such requirements as to form, content, and documentation as the Commission may prescribe. Within 10 days after the date of receipt of such an application, the Commission shall send a notice of such proposed transaction to—

(i) the Governor of each State which may be affected, directly or indirectly, by such transaction if it is executed or implemented;

(ii) the Attorney General;

(iii) the Secretary of Labor; and

(iv) the Secretary (except where the Secretary is the proposing party).

The Commission shall accompany its notice to the Secretary with a request for the report of the Secretary pursuant to clause (v) of subdivision (f) of this paragraph. Each such notice shall include a copy of such application; a summary of the proposed transaction involved, and the proposing party's reasons and public interest justifications therefor.

(d) The Commission shall hold a public hearing on each application submitted to it pursuant to subdivision (c) of this paragraph, within 90 days after the date of receipt of such application. Such public hearing shall be held before a panel of the Commission duly designated for such purpose by the Commission. Such panel may utilize administrative law judges and the Rail Services Planning Office in such manner as it considers appropriate for the conduct of the hearing, the evaluation of such application and comments thereon, and the timely and reasonable determination of whether it is in the public interest to grant such ap-

plication and to approve such proposed transaction pursuant to subdivision (g) of this paragraph. Such panel shall complete such hearing within 180 days after the date of referral of such application to such panel, and it may, in order to meet such requirement, prescribe such rules and make such rulings as may tend to avoid unnecessary costs or delay. Such panel shall recommend a decision and certify the record to the full Commission for final decision, within 90 days after the termination of such hearing. The full Commission shall hear oral argument on the matter so certified, and it shall render a final decision within 120 days after receipt of the certified record and recommended decision of such panel. The Commission may, in its discretion, extend any time period set forth in this subdivision, except that the final decision of the Commission shall be rendered not later than the second anniversary of the date of receipt of such an application by the Commission.

(e) In making its recommended decision with respect to any transaction proposed under this paragraph, the duly designated panel of the Commission shall—

(i) request the views of the Secretary, with respect to the effect of such proposed transaction on the national transportation policy, as stated by the Secretary, and consider the matter submitted under subdivision (f) of this paragraph;

(ii) request the views of the Attorney General, with respect to any competitive or anticompetitive effects of such proposed transaction; and

(iii) request the views of the Secretary of Labor, with respect to the effect of such proposed transaction on railroad employees, particularly as to whether such proposal contains adequate employee protection provisions.

Such views shall be submitted in writing and shall be available to the public upon request.

(f) Whenever a proposed transaction is submitted to the Secretary by a common carrier by railroad pursuant to clause (ii) of subdivision (b) of this paragraph, and whenever the Secretary develops a proposed transaction for submission to the Commission pursuant to subdivision (c) of this paragraph, the Secretary shall—

(i) publish a summary and a detailed account of the contents of such proposed transaction in the Federal Register, in order to provide reasonable notice to interested parties and the public of such proposed transaction;

(ii) give notice of such proposed transaction to the Attorney General and to the Governor of each State in which any part of the properties of the common carriers by railroad involved in such proposed transaction are situated;

(iii) conduct an informal public hearing with respect to such proposed transaction and provide an opportunity for all interested parties to submit written comments;

(iv) study each such proposed transaction with respect to—

(A) the needs of rail transportation in the geographical area affected;

(B) the effect of such proposed transaction on the retention and promotion of competition in the provision of rail and other transportation services in the geographical area affected;

(C) the environmental impact of such proposed transaction and of alternative choices of action;

(D) the effect of such proposed transaction on employment;

(E) 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;

(F) the rationalization of the rail system;

(G) the impact of such proposed transaction on shippers, consumers, and railroad employees;

(H) the effect of such proposed transaction on the communities in the geographical areas affected and on the geographical areas contiguous to such areas; and

(I) whether such proposed transaction will improve rail service; and

(v) submit a report to the Commission setting forth the results of each study conducted pursuant to clause (iv) of this subdivision, within 10 days after an application is submitted to the Commission pursuant to subdivision (c) of this paragraph, with respect to the proposed transaction which is the subject of such study. The Commission shall give due weight and consideration to such report in making its determinations under this paragraph.

(g) The Commission may—

(i) approve a transaction proposed under this paragraph, if the Commission determines that such proposed transaction is in the public interest; and

(ii) condition its approval of any such proposed transaction on any terms, conditions, and modifications which the Commission determines are in the public interest; or

(iii) disapprove any such proposed transaction, if the Commission determines that such proposed transaction is not in the public interest.

In each such case, the decision of the Commission shall be accompanied by a written opinion setting forth the reasons for its action.

(4) Noncarrier deemed carrier upon acquiring control

Whenever a person which is not a carrier is authorized, by an order entered under paragraph (2) of this section, to acquire control of any carrier or of two or more carriers, such person thereafter shall, to the extent provided by the Commission in such order, be considered as a carrier subject to such of the following provisions as are applicable to any carrier involved in such acquisition of control: Sections 20(1) to (10), 304(a)(1) and (2), 320 and 913 of this Appendix, (which relate to reports, accounts, and so forth, of carriers), and sections 20a(2) to (11), and 314 of this Appendix, (which relate to issues of securities and assumptions of liability of carriers), including in each case the penalties applicable in the case of violations of such provisions. In the application of such provisions of sections 20a and 314 of this Appendix, in the case of any such person, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance of its service to the public by each carrier which is under the control of such person, that it will not impair the ability of any such carrier to perform such service, and that it is otherwise consistent with the public interest.

(5) Control effected by other than prescribed methods

It shall be unlawful for any person, except as provided in paragraphs (2) and (3) of this section, to enter into any transaction within the scope of subdivision (a) of paragraph (2) of this section, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (6) of this section, the words "control or management" shall be construed to include the power to exercise control or management.

(6) Transactions deemed to effectuate control or management

For the purposes of this section, but not in anywise limiting the application of the provisions thereof, any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two carriers—

(a) if such transaction is by a carrier, and if the effect of such transaction is to place such carrier

and persons affiliated with it, taken together, in control of another carrier;

(b) if such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(c) if such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier.

(7) Affiliation with a carrier defined

For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

(8) Investigation by Commission of effectuation of control by nonprescribed methods

The Commission is authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (5) of this section. If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation. The provisions of this paragraph shall be in addition to, and not in substitution for, any other enforcement provisions contained in this chapter; and with respect to any violation of paragraphs (2) to (13) of this section, any penalty provision applying to such a violation by a common carrier subject to this chapter shall apply to such a violation by any other person.

(9) Jurisdiction of injunctions, etc., against violations of section or orders

The district courts of the United States shall have jurisdiction upon the complaint of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

(10) Supplemental orders by Commission

The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2) or (8) of this section, as it may deem necessary or appropriate.

(11) Unifications, consolidations, etc., of motor carriers only

Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) of this section where the only parties to the transaction are motor carriers subject to chapter 8 of this Appendix (but not including a motor carrier controlled by or affiliated with a carrier as defined in section 1(3) of this Appendix), and where the aggregate gross operating revenues of such carriers have not exceeded $300,000 for a period of twelve consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction.

Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) of this section where the only parties to the transaction are street, suburban, or interurban electric railways none of which is controlled by or under common control with any carrier which is operated as part of a general steam railroad system of transportation.

(12) Plenary nature of authority under section

The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any powers granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

(13) Separability clause

If any provision of the foregoing paragraphs of this section, or the application thereof to any person or circumstances, is held invalid, the other provisions of such paragraphs, and the application of such provision to any other person or circumstances, shall not be affected thereby.

(14) "Carrier" defined

As used in paragraphs (2) to (13) of this section, inclusive, the term "carrier" means a carrier by railroad and an express company and a sleeping-car company, subject to this chapter; and a motor carrier subject to chapter 8 of this Appendix; and a water carrier subject to chapter 12 of this Appendix.

(15) Interest in competing water carrier; prohibition

Notwithstanding the provisions of paragraph (2) of this section, from and after the 1st day of July 1914, it shall be unlawful for any carrier, as defined in section 1(3) of this Appendix, or (after September 18, 1940) any person controlling, controlled by, or under common control with, such a carrier to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which such carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which

such violation continues shall be deemed a separate offense.

(16) Determination of fact of competition

Jurisdiction is conferred on the Commission to determine questions of fact, arising under paragraph (15) of this section, as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of such paragraph and may pray for an order permitting the continuance of any vessel or vessels already in operation, or may pray for an order under the provisions of paragraph (17) of this section. The Commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the Commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said Commission shall be final.

(17) Permission of interest in competing water carrier

Notwithstanding the provisions of paragraph (15) of this section, the Commission shall have authority, upon application of any carrier, as defined in section 1(3) of this Appendix, and after hearing, by order to authorize such carrier to own or acquire ownership of, to lease or operate, to have or acquire control of, or to have or acquire an interest in, a common carrier by water or vessel, not operated through the Panama Canal, with which the applicant does or may compete for traffic, if the Commission shall find that the continuance or acquisition of such ownership, lease, operation, control, or interest will not prevent such common carrier by water or vessel from being operated in the interest of the public and with advantage to the convenience and commerce of the people, and that it will not exclude, prevent, or reduce competition on the route by water under consideration: *Provided,* That if the transaction or interest sought to be entered into, continued, or acquired is within the scope of paragraph (2)(a) of this section, the provisions of paragraph (2) of this section shall be applicable thereto in addition to the provisions of this paragraph: *And provided further,* That no such authorization shall be necessary if the carrier having the ownership, lease, operation, control, or interest has, prior to September 18, 1940, obtained an order of extension under the provisions of paragraph (21) of this section, as in effect prior to such date, and such order is still in effect.

(Feb. 4, 1887, ch. 104, pt. I, § 5, 24 Stat. 380; Aug. 24, 1912, ch. 390, § 11, 37 Stat. 566; Feb. 28, 1920, ch. 91, §§ 407, 408, 41 Stat. 480, 482; June 10, 1921, ch. 20, 42 Stat. 27; June 16, 1933, ch. 91, title II, §§ 201-203, 48 Stat. 217-220; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 7, 54 Stat. 905; Aug. 2, 1949, ch. 379, §§ 3, 4, 63 Stat. 485; July 27, 1965, Pub. L. 89-93, § 1, 79 Stat. 284; Feb. 5, 1976, Pub. L. 94-210, title IV, §§ 402, 403, 90 Stat. 62, 63; Oct. 19, 1976, Pub. L. 94-555, title II, § 220(i), 90 Stat. 2630.)

§ 5a. Repealed. Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1466

Section, act June 16, 1933, ch. 91, title II, § 204, 46 Stat. 220, related to continuing applicability of statutes to combinations and consolidations existing prior to June 16, 1933. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49.

§ 5b. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 5b. Agreements between common carriers other than common carriers by railroad generally

(1) "Carrier" and "antitrust laws" defined

For purposes of this section—

(A) The term "carrier" means any common carrier subject to chapter 1 (other than a common carrier by railroad), 8, or 12 of this Appendix or any freight forwarder subject to chapter 13 of this Appendix; and

(B) The term "antitrust laws" has the meaning assigned to such term in section 1 of the Act approved October 15, 1914 [15 U.S.C. 12].

(2) Application to Commission for approval of agreements; rules and regulations

Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules and regulations as the Commission may prescribe, apply to the Commission for approval of the agreement, and the Commission shall by order approve any such agreement (if approval thereof is not prohibited by paragraph (4), (5), or (6) of this section) if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (9) of this section should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. The approval of the Commission shall be granted only upon such terms and conditions as the Commission may prescribe as necessary to enable it to grant its approval in accordance with the standard above set forth in this paragraph.

(3) Maintenance of accounts and records by conferences, bureaus, committees, etc.

Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the Commission such reports, as may be prescribed by the Commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the Commission or its duly authorized representatives.

(4) Agreements between carriers of different classes

The Commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that such agreement is of the character described in paragraph (2) of this section and is limited to matters relating to transportation under joint rates or over through routes; and for purposes of this paragraph carriers by railroad, express companies, and sleeping-car companies are carriers of one class; pipe-line companies are carriers of one class; carriers by motor vehicle are carriers of one class; carriers by water are carriers of one class; and freight forwarders are carriers of one class.

(5) Pooling or division agreements

The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction, to which section 5 of this Appendix is applicable.

(6) Agreements for determining matters through joint consideration

The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consid-

eration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

(7) Investigation of prior approved agreements; termination or modification of approval; effective date

The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which such approval was granted, is not or are not in conformity with the standard set forth in paragraph (2) of this section, or whether any such terms and conditions are not necessary for purposes of conformity with such standard, and, after such investigation, the Commission shall by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardship.

(8) Hearings

No order shall be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

(9) Relief from operation of antitrust laws

Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is not prohibited by paragraph (4), (5), or (6) of this section, relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

(10) Effect of Commission's action

Any action of the Commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing the terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of paragraph (9) of this section.

(Feb. 4, 1887, ch. 104, pt. I, § 5a, as added June 17, 1948, ch. 491, 62 Stat. 472, and amended Feb. 5, 1976, Pub. L. 94-210, title II, § 208(a), 90 Stat. 42.)

§ 5c. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 5c. Agreements between common carriers by railroad subject to this chapter

(1) Definitions

As used in this section, the term—

(a) "affiliate" means any person directly or indirectly controlling, controlled by, or under common control or ownership with, any other person, and as used in this subdivision, the term (i) "control" has the same meaning as in section 1(3)(b) of this Appendix; and (ii) "ownership" refers to equity holdings of 5 per centum or more in any business entity;

(b) "antitrust laws" means the Act of July 2, 1890, as amended (15 U.S.C. 1, et seq.), the Act of October 15, 1914, as amended (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 8 and 9 of title 15, and chapter 592 of the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a); and

(c) "carrier" means any common carrier by railroad subject to this chapter.

(2) Application to Commission for approval of agreements; rules and regulations; criteria

Any carrier which is a party to an agreement, between or among two or more carriers, relating to rates, fares, classification, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof, shall, under such rules and regulations as the Commission shall prescribe, apply to the Commission for approval of such agreement. The Commission shall, by order, approve any such agreement if approval thereof is not prohibited by paragraph (4) or (5) of this section and if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (8) of this section should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. No such approval shall be granted or continued (a) if any of the terms and conditions which are prescribed under the last sentence of this paragraph are violated or not complied with, or (b) unless the Commission receives a verified written statement (and any written supplement or addendum thereto requested by the Commission) setting forth, with respect to each carrier which is a party to such agreement (i) its name, (ii) the mailing address and telephone number of its headquarters office, (iii) the names of each of its affiliates, (iv) the names, addresses, and affiliations of each of its officers and directors and of each person who, together with any affiliate, owns or controls any debt, equity, or security interest in it having a value of $1,000,000 or more, and (v) such other information as the Commission directs to be included. The approval of the Commission shall be granted only upon such terms and conditions as the Commission determines are necessary to enable its approval to be granted in accordance with the standard set forth in this paragraph.

(3) Maintenance of accounts and records by conferences, bureaus, committees, etc.; investigative and reporting powers of Commission

Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the Commission such reports as may be prescribed by the Commission. All such accounts, records, files, and memoranda shall be subject to inspection by the Commission or its duly authorized representatives. The Commission may conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, copy and verify the correctness of information subject to inspection, and take depositions (a) to determine whether any such conference, bureau, committee, or other organization, or any carrier which is a party to any such agreement, has acted or is acting in compliance with the provisions of this section, regulations issued under this section, and the public interest, (b) to determine whether any such organization or carrier is inhibiting an efficient utilization of transportation resources or has established practices which are inconsistent with efficient, flexible, and economic operation, and (c) for such other purposes as the Commission considers appropriate.

(4) Pooling or division agreements

The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction to which section 5 of this Appendix is applicable.

(5) Agreements for determining matters through joint consideration; limitations

(a) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration, unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action, without fear of any sanction or retaliatory action, at any time before or after any determination arrived at through such procedure. In no event shall any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section—

(i) permit participation in agreements with respect to, or any voting on, single-line rates, allowances, or charges established by any carrier;

(ii) permit any carrier to participate in agreements with respect to, or to vote on, rates, allowances, or charges relating to any particular interline movement, unless such carrier can practicably participate in such movement; or

(iii) permit, provide for, or establish any procedure for joint consideration or any joint action to protest or otherwise seek the suspension of any rate or classification filed by a carrier of the same mode pursuant to section 15(8) of this Appendix where such rate or classification is established by independent action.

As used in clause (i) of this subdivision, a single-line rate, allowance, or charge is one that is proposed by a single carrier applicable only over its own line and as to which the service (exclusive of terminal services provided by switching, drayage, or other terminal carriers or agencies) can be performed by such carrier.

(b) The limitations set forth in subdivision (a) of this paragraph shall not be applicable to—

(i) general rate increases or decreases, if the agreements accord the shipping public, under specified procedures, adequate notice of at least 15 days of such proposals and an opportunity to present comments thereon, in writing or otherwise, prior to the filing with the Commission of the tariffs containing such increases or decreases, or

(ii) broad tariff changes if such changes are of general application or substantially general application throughout a territory or territories within which such changes are to be applicable.

In any proceeding in which it is alleged that a carrier voted or agreed upon a rate, allowance, or charge, in violation of the provisions of this section, the party alleging such violation shall have the burden of showing that such vote or agreement occurred. A showing of parallel behavior is not, by itself, sufficient to satisfy such burden.

(6) Investigation of prior approved agreements; termination or modification of approval; effective date; review of approval; report to President and Congress; termination or suspension of approval

(a) The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which such approval was granted, is not or are not in conformity with the standards set forth in paragraph (2) of this section and with the public interest, and whether any such terms and conditions are not necessary or whether any additional or modified terms and conditions are necessary for purposes of conformity with such standard. After any such investigation the Commission shall, by order, terminate or modify its approval of such an agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardship.

(b) The Commission shall periodically, but not less than once every 3 years, review each agreement which the Commission has by order approved under this section to determine whether such agreement, or any conference, bureau, committee, or other organization established or continued pursuant to such agreement, still conforms with the standard set forth in paragraph (2) of this section and the public interest, and to evaluate the success and effect upon the consuming public and the national rail freight transportation system of such agreement and organization. The Commission shall report to the President and to the Congress on the results of such reviews, as part of its annual report pursuant to section 21 of this Appendix. If the Commission makes a determination that any such agreement or organization is no longer in conformity with such standard, the Commission shall by order terminate or suspend its approval thereof.

(7) Hearings

No order shall be entered under this section except after interested parties have been afforded a reasonable opportunity for a hearing.

(8) Relief from operation of antitrust laws

Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is no [not] prohibited by paragraph (4) or (5) of this section, hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

(9) Applicability of Commission's action

Any action of the Commission under this section (a) in approving an agreement, (b) in denying an application for such approval, (c) in terminating or modifying such approval, (d) in prescribing the terms and conditions upon which such approval is to be granted, or (e) in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of paragraph (8) of this section.

(10) Periodic assessment and report by Federal Trade Commission to Commission regarding agreements, etc.; consultations; availability of report

The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall periodically prepare an assessment of, and shall report to the Commission on (a) any possible anticompetitive features of (i) any agreements approved or submitted for approval under this section, and (ii) any conferences, bureaus, committees, or other organizations operating under such agreements, and (b) possible ways to eliminate or alleviate any such anticompetitive features, effects, or aspects in a manner that will further the goals of the national transportation policy and this Act. The Commission shall make such reports available to the public.

(11) Time for final disposition of rule, rate or charge docketed with conferences, bureaus, committees, etc.

Any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under this section shall make a final disposition with respect to any rule,

rate, or charge docketed with such organization within 120 days after such proposal is docketed.

(Feb. 4, 1887, ch. 104, part I, § 5b, as added Feb. 5, 1976, Pub. L. 94-210, title II, § 208(b), 90 Stat. 42, and amended Oct. 19, 1976, Pub. L. 94-555, title II, § 220(k), 90 Stat. 2630.)

§ 6. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 6. Schedules and statements of rates, etc., joint rail and water transportation

(1) Schedule of rates, fares, and charges; filing and posting

Every common carrier subject to the provisions of this chapter shall file with the Commission created by this chapter and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares, and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this chapter.

(2) Schedule of rates through foreign country

Any common carrier subject to the provisions of this chapter receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this chapter, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

(3) Change in rates, fares, etc.; notice required; simplification of schedules

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided,* That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: *Provided further,* That the Commission is authorized to make suitable rules and regulations for the simplification of schedules of rates, fares, charges, and classifications and to permit in such rules and regulations the filing of an amendment of or change in any rate, fare, charge, or classification without filing complete schedules covering rates, fares, charges, or classifications not changed if, in its judgment, not inconsistent with the public interest.

(4) Joint tariffs

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

(5) Copies of traffic contracts to be filed

Every common carrier subject to this chapter shall also file with said Commission copies of all contracts, agreements, or arrangements, with other common carriers in relation to any traffic affected by the provisions of this chapter to which it may be a party: *Provided, however,* That the Commission, by regulations, may provide for exceptions from the requirements of this paragraph in the case of any class or classes of contracts, agreements, or arrangements, the filing of which, in its opinion, is not necessary in the public interest.

(6) Form and manner of publishing, filing, and posting schedules; incorporation of rates into individual tariffs; time for incorporation; rejection of schedules; unlawful use

The schedules required by this section to be filed shall be published, filed, and posted in such form and manner as the Commission by regulation shall prescribe. The Commission shall, beginning 2 years after February 5, 1976, require (a) that all rates shall be incorporated into the individual tariffs of each common carrier by railroad subject to this chapter or rail ratemaking association within 2 years after the initial publication of the rate, or within 2 years after a change in any rate is approved by the Commission, whichever is later, and (b) that any rate shall be null and void with respect to any such carrier or association which does not so incorporate such rate into its individual tariff. The Commission may, upon good cause shown, extend such period of time. Notice of any such extension and a statement of the reasons therefor shall be promptly transmitted to the Congress. The Commission is authorized to reject any schedule filed with it which is not in accordance with this section and with such regulations. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(7) Transportation without filing and publishing rates forbidden; rebates; privileges

No carrier, unless otherwise provided by this chapter, shall engage or participate in the transportation of passengers or property, as defined in this chapter,

unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

(8) Preference to shipments for United States

In time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given, over all other traffic, for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned.

(9) Schedule lacking notice of effective date

The Commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(10) Penalty for failure to comply with regulations

In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of $500 for each such offense, and $25 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(11) Jurisdiction of Commission over transportation by rail and water

When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction otherwise given by this chapter:

(a) To establish physical connection between the lines of the rail carrier and the dock at which interchange of passengers or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right-of-way, or by directing either or both the rail and water carrier, individually or in connection with one another to construct and connect with the lines of the rail carrier a track or tracks to the dock. The Commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier: *Provided,* That construction required by the Commission under the provisions of this paragraph shall be subject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under section 1 of this Appendix.

(b) To establish proportional rates or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

(12) Jurisdiction of Commission over carriers contracting with water carriers operating to foreign ports

If any common carrier subject to this Act enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Commission may by order require such common carrier to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country.

(Feb. 4, 1887, ch. 104, pt. I, § 6, 24 Stat. 380; Mar. 2, 1889, ch. 382, § 1, 25 Stat. 855; June 29, 1906, ch. 3591, § 2, 34 Stat. 586; June 18, 1910, ch. 309, § 9, 36 Stat. 548; Aug. 24, 1912, ch. 390, § 11, 37 Stat. 568; Aug. 29, 1916, ch. 417, 39 Stat. 604; Feb. 28, 1920, ch. 91, §§ 409–413, 41 Stat. 483; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 8, 54 Stat. 910; Aug. 2, 1949, ch. 379, § 5, 63 Stat. 486; Feb. 5, 1976, Pub. L. 94–210, title II, § 209, 90 Stat. 45.)

§ 7. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 7. Combinations to prevent continuous carriage of freight prohibited

It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this chapter.

(Feb. 4, 1887, ch. 104, pt. I, § 7, 24 Stat. 382; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

§ 8. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 8. Liability in damages to persons injured by violation of law

In case any common carrier subject to the provisions of this chapter shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

(Feb. 4, 1887, ch. 104, pt. I, § 8, 24 Stat. 382; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

§ 9. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 9. Remedies of persons damaged; election; witnesses

Any person or persons claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter in any district court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit.

(Feb. 4, 1887, ch. 104, pt. I, § 9, 24 Stat. 382; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Oct. 15, 1970, Pub. L. 91-452, title II, § 243(a), 84 Stat. 931.)

§ 10. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 10. Violation of regulations by carrier; discrimination; penalties

(1) Violation by carrier or officer; penalty

Any common carrier subject to the provisions of this chapter, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this chapter to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed $5,000 for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

(2) False billing or classification by carrier; penalty

Any common carrier subject to the provisions of this chapter, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding $5,000, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

(3) Obtaining lower rates by false billing, etc., or by false claim; penalty

Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this chapter, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly, or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates than established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding $5,000 or imprisonment in the penitentiary for a term of not exceeding two years, or both in the discretion of

the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

(4) Inducing unjust discrimination; penalty; liability for damages

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of this chapter, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding $5,000, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

(Feb. 4, 1887, ch. 104, pt. I, § 10, 24 Stat. 382; Mar. 2, 1889, ch. 382, § 2, 25 Stat. 857; June 18, 1910, ch. 309, § 10, 36 Stat. 549; Feb. 28, 1920, ch. 91, § 414, 41 Stat. 483; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

§ 11. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 11. Interstate Commerce Commission; appointment, term, and qualifications of Commissioners

A commission is created and established to be known as the Interstate Commerce Commission, which shall be composed of eleven Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners appointed under this chapter and their successors, shall continue in office for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Of the Commissioners in office on January 1, 1926, the term of one shall expire December 31 in each of the years 1926, 1927, and 1932 and the terms of two shall expire December 31, in each of the years 1928, 1929, 1930, and 1931. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than six of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this chapter, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. Upon the expiration of his term of office a Commissioner shall continue to serve until his successor is appointed and shall have qualified.

(Feb. 4, 1887, ch. 104, pt. I, §§ 11, 24, 24 Stat. 383, 387; June 29, 1906, ch. 3591, § 8, 34 Stat. 595; Aug. 9, 1917, ch. 50, § 1, 40 Stat. 270; Feb. 28, 1920, ch. 91, § 440, 41 Stat. 497; July 16, 1935, ch. 383, 49 Stat. 481; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

§ 12. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 12. Authority and duties of Commission; witnesses; depositions

(1) Authority, duties, and proceedings of Commission; witnesses; exemption from applicability of chapter for persons, class of persons, etc.; procedures for establishment and revocation

(a) The Commission shall have authority, in order to perform the duties and carry out the objects for which it was created, to inquire into and report on the management of the business of all common carriers subject to the provisions of this chapter, and to inquire into and report on the management of the business of persons controlling, controlled by, or under a common control with, such carriers, to the extent that the business of such persons is related to the management of the business of one or more such carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted. The Commission may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this chapter; and may transmit to Congress from time to time such recommendations (including recommendations as to additional legislation) as the Commission may deem necessary. The Commission is authorized and required to execute and enforce the provisions of this chapter; and, upon the request of the Commission, it shall be the duty of any United States attorney to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this chapter the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

(b) Whenever the Commission determines, upon petition by the Secretary or an interested party or upon its own initiative, in matters relating to a common carrier by railroad subject to this chapter, after notice and reasonable opportunity for a hearing, that the application of the provisions of this chapter (i) to any person or class of persons, or (ii) to any services or transactions by reason of the limited scope of such services or transactions, is not necessary to effectuate the national transportation policy declared in this Act, would be an undue burden on such person or class of persons or on interstate and foreign commerce, and would serve little or no useful public purpose, it shall, by order, exempt such persons, class of persons, services, or transactions from such provisions to the extent and for such period of time as may be specified in such order. The Commission may, by order, revoke any such exemption whenever it finds, after notice and reasonable opportunity for a hearing, that the application of the provisions of this chapter to the exempted person, class of persons, services, or transactions, to the extent specified in such order, is necessary to effectuate the national transportation policy declared in this Act and to achieve effective regulation

by the Commission, and would serve a useful public purpose.

(2) Attendance of witnesses and production of documents

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

(3) Compelling attendance and testimony of witnesses, etc.

And any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this chapter, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Depositions

The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending [pending] before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any United States commissioner, or any clerk of a district court, or any 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 please of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

(5) Oath; subscription of testimony on deposition

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(6) Deposition in foreign country; filing of depositions

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(7) Fees for depositions

Witnesses whose depositions are taken pursuant to this chapter, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Feb. 4, 1887, ch. 104, pt. I, § 12, 24 Stat. 383; Mar. 2, 1889, ch. 382, § 3, 25 Stat. 858; Feb. 10, 1891, ch. 128, 26 Stat. 743; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Feb. 28, 1920, ch. 91, § 415, 41 Stat. 484; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 9(a), 54 Stat. 910; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Feb. 5, 1976, Pub. L. 94-210, title II, § 207, 90 Stat. 42.)

§ 13. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 13. Complaints to and investigations by Commission

(1) Complaint to Commission of violation of law by carrier; reparation; investigation

Any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

(2) Complaints by State commissions; inquiry on Commission's own motion; expenses of State commissions

Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission or any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its motion as though it had been appealed to by complaint or petition under any of the provisions of this chapter, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Representatives of State commissions sitting with the Commission, under the provisions of this section, in cases pending before the Commission, shall receive such allowances for travel and subsistence expense as the Commission shall provide.

(3) Investigation involving State regulations; conference of State and interstate commissions

Whenever in any investigation under the provisions of this chapter, or in any investigation instituted upon petition of the carrier concerned, which petition is authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this chapter or chapter 12 of this title with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this chapter or chapter 12 of this Appendix.

(4) Duty of Commission where State regulations result in discrimination

Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce (which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier, or group or groups of carriers wholly within any State), which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, discrimination, or burden. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

(5) Exclusive authority to determine and prescribe intrastate rates; prerequisites; procedures

The Commission shall have exclusive authority, upon application to it, to determine and prescribe intrastate rates if,—

(a) a carrier by railroad has filed with an appropriate administrative or regulatory body of a State, a change in an intrastate rate, fare, or charge, or a change in a classification, regulation, or practice that has the effect of changing such a rate, fare, or charge, for the purpose of adjusting such rate, fare, or charge to the rate charged on similar traffic moving in interstate or foreign commerce; and

(b) the State administrative or regulatory body has not, within 120 days after the date of such filing, acted finally on such change.

Notice of the application to the Commission shall be served on the appropriate State administrative or regulatory body. Upon the filing of such an application, the Commission shall determine and prescribe, according to the standards set forth in paragraph (4) of this section, the rate thereafter to be charged. The provisions of this paragraph shall apply notwithstanding the laws or constitution of any State, or the pendency of any proceeding before any State court or other State authority. Nothing in this paragraph shall affect the authority of the Commission to institue [institute] an investigation or to act in such investigation as provided in paragraphs (3) and (4) of this section.

(6) Petition for commencement of proceeding for issuance, amendment, or repeal of order, etc., relating to common carriers by railroads; grant or denial; judicial review; limitations; definition

(a) Whenever, pursuant to section 553(e) of title 5, an interested person (including a government entity) petitions the Commission for the commencement of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation relating to common carriers by railroads under this Act, the Commission shall grant or deny such petition within 120 days after the date of receipt of such petition. If the Commission grants such a petition, it shall commence an appropriate proceeding as soon thereafter as practicable. If the Commission denies such a petition, it shall set forth, and publish in the Federal Register, its reasons for such denial.

(b) If the Commission denies a petition under subdivision (a) (or if it fails to act thereon within the 120-day period established by such subdivision), the petitioner may commence a civil action in an appropriate court of appeals of the United States for an order directing the Commission to initiate a proceeding to take the action requested in such petition. Such an action shall be commenced within 60 days after the date of such denial or, where appropriate, within 60 days after the date of expiration of such 120-day period.

(c) If the petitioner, in an action commenced under subdivision (b), demonstrates to the satisfaction of the court, by a preponderance of the evidence in the record before the Commission or, in an action based on a petition on which the Commission failed to act, in a new proceeding before such court, that the action requested in such petition to the Commission is necessary and that the failure of the Commission to take such action will result in the continuation of practices which are not consistent with the public interest or in accordance with this Act, such court shall order the Commission to initiate such action.

(d) In any action under this paragraph, a court shall have no authority to compel the Commission to take any action other than the initiation of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation under this Act.

(e) As used in this paragraph, the term "Commission" includes any division, individual Commissioner, administrative law judge, employee board, or any other person authorized to act on behalf of the Commission in any part of the proceeding for the issuance, amendment, or repeal of any order, rule, or regulation under this Act relating to common carriers by railroad.

(Feb. 4, 1887, ch. 104, pt. I, § 13, 24 Stat. 383; June 18, 1910, ch. 309, § 11, 36 Stat. 550; Feb. 28, 1920, ch. 91, § 416, 41 Stat. 484; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 9(b), (c), 54 Stat. 910; Aug. 12, 1958, Pub. L. 85-625, § 4, 72 Stat. 570; Feb. 5, 1976, Pub. L. 94-210, title II, § 210, title III, § 304(b), 90 Stat. 46, 52; Oct. 19, 1976, Pub. L. 94-555, title II, § 220(*l*), 90 Stat. 2630.)

§ 13a. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 13a. Discontinuance or change of the operation or service of trains or ferries; notice; investigation; hearing; determination

(1) A carrier or carriers subject to this chapter, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot or other facility served thereby, notice at least thirty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said thirty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. Upon the institution of such investigation, the Commission, by order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than four months beyond the date when such discontinuance or change would otherwise have become effective. If, after hearing in such investigation whether concluded before or after such discontinuance or change has become effective, the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train or ferry, in whole or in part, for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this chapter, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph.

(Feb. 4, 1887, ch. 104, pt. I, § 13a, as added Aug. 12, 1958, Pub. L. 85-625, § 5, 72 Stat. 571.)

§ 14. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 14. Reports and decisions of Commission

(1) Reports of investigations by Commission

Whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded, such report shall include the findings of fact on which the award is made.

(2) Record of reports; copies

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

(3) Publication of reports and decisions; printing and distribution of annual reports

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

(Feb. 4, 1887, ch. 104, pt. I, § 14, 24 Stat. 384; Mar. 2, 1889, ch. 382, § 4, 25 Stat. 859; June 29, 1906, ch. 3591, § 3, 34 Stat. 589; Feb. 28, 1920, ch. 91, § 417, 41 Stat. 484; Aug. 9, 1935, ch. 408, § 1, 49 Stat. 543.)

§ 15. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470; Pub. L. 96-258, § 3(b), June 3, 1980, 94 Stat. 427

Section repealed subject to an exception related to transportation of oil by pipeline. Section 401 of Pub. L. 95-607, which amended par. (8)(c) and (d) of this section subsequent to the repeal of this section by Pub. L. 95-473, was repealed by Pub. L. 96-258, effective July 1, 1980, as provided by section 3(c) of Pub L. 96-258. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 15. Determination of rates, routes, etc.; routing of traffic; disclosures, etc.

(1) Commission empowered to determine and prescribe rates, classifications, etc.

Whenever, after full hearing, upon a complaint made as provided in section 13 of this Appendix, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property, as defined in section 1 of this Appendix, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

(2) Orders of Commission

Except as otherwise provided in this chapter, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time as the Commission may prescribe. Such orders shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

(3) Establishment of through routes, joint classifications, joint rates, fares, etc.

The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this chapter, or by carriers by railroad subject to this chapter and common carriers by water subject to chapter 12 of this Appendix, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section. With respect to carriers by railroad, in determining whether any such cancellation or proposed cancellation involving any common carrier by railroad is consistent with the public interest, the Commission shall, to the extent applicable, (a) compare the distance traversed and the average transportation time and expense required using the through route, and the distance traversed and the average transportation time and expense required using alternative routes, between the points served by such through route, (b) consider any reduction in energy consumption which may result from such cancellation, and (c) take into account the overall impact of such cancellation on the shippers and carriers who are affected thereby.

(4) Through routes to embrace entire length of railroad; temporary through routes

In establishing any such through route the Commission shall not (except as provided in section 3 of this Appendix, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b) of this paragraph, give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

(5) Transportation of livestock in carload lots; services included

Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee, or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee, or owner, or to try an intermediate market, or to comply with quarantine regulations. The Commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers existing on February 28, 1920, by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

(6) Commission to establishment just divisions of joint rates, fares, or charges; adjustments; procedures applicable

(a) Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares, and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge.

(b) Notwithstanding any other provision of law, the Commission shall, within 180 days after February 5, 1976, establish, by rule, standards and procedures for the conduct of proceedings for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise) in accordance with the provisions of this paragraph. The Commission shall issue a final order in all such proceedings within 270 days after the submission to the Commission of a case. If the Commission is unable to issue such a final order within such time, it shall issue a report to the Congress setting forth the reasons for such inability.

(c) All evidentiary proceedings conducted pursuant to this paragraph shall be completed, in a case brought upon a complaint, within 1 year following the filing of the complaint, or, in a case brought upon the Commission's initiative, within 2 years following the commencement of such proceeding, unless the Commission finds that such a proceeding must be extended to permit a fair and expeditious completion of the proceeding. If the Commission is unable to meet any such time requirement, it shall issue a report to the Congress setting forth the reasons for such inability.

(d) Whenever a proceeding for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise established) is commenced by the filing of a complaint with the Commission, the complaining carrier or carriers shall (i) attach thereto all of the evidence in support of their position, and (ii) during the course of such proceeding, file only rebuttal or reply evidence unless otherwise directed by order of the Commission. Upon receipt of a notice of intent to file a complaint pursuant to this paragraph, the Commission shall accord, to the party filing such notice, the same right to discovery that would be accorded to a party filing a complaint pursuant to this paragraph.

(7) Commission to determine lawfulness of new rates; suspension; refunds; nonapplicability to common carriers by railroad subject to chapter

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible. This paragraph shall not apply to common carriers by railroad subject to this chapter.

(8) Commission to determine lawfulness of new rates; applicability to common carrier by railroad; suspensions; accounts; hearing and basis of decision

(a) Whenever a schedule is filed with the Commission by a common carrier by railroad stating a new individual or joint rate, fare, or charge, or a new individual or joint classification, regulation, or practice affecting a rate, fare, or charge, the Commission may, upon the complaint of an interested party or upon its own initiative, order a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice. The hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Such hearing shall be completed and a final decision rendered by the Commission not later than 7 months after such rate, fare, charge, classification, regulation, or practice was scheduled to become effective, unless, prior to the expiration of such 7-month period, the Commission reports in writing to the Congress that it is unable to render a decision within such period, together with a full explanation of the reason for the delay. If such a report is made to the Congress, the final decision shall be made not later than 10 months after the date of the filing of such schedule. If the final decision of the Commission is not made within the applicable time period, the rate, fare, charge, classification, regulation, or practice shall go into effect

immediately at the expiration of such time period, or shall remain in effect if it has already become effective. Such rate, fare, charge, classification, regulation, or practice may be set aside thereafter by the Commission if, upon complaint of an interested party, the Commission finds it to be unlawful.

(b) Pending a hearing pursuant to subdivision (a), the schedule may be suspended, pursuant to subdivision (d), for 7 months beyond the time when it would otherwise go into effect, or for 10 months if the Commission makes a report to the Congress pursuant to subdivision (a), except under the following conditions:

(i) in the case of a rate increase, a rate may not be suspended on the ground that it exceeds a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this Appendix or, following promulgation of standards and procedures under section 1(5)(d) of this Appendix, if the carrier is found to have market dominance, within the meaning of section 1(5)(c)(i) of this Appendix, over the service to which such rate increase applies; or

(ii) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this Appendix, or for the purposes of investigating such rate change upon a complaint that such rate change constitutes a competitive practice which is unfair, destructive, predatory or otherwise undermines competition which is necessary in the public interest.

(c) The limitations upon the Commission's power to suspend rate changes set forth in subdivisions (b)(i) and (ii) apply only to rate changes which are not of general applicability to all or substantially all classes of traffic and only if—

(i) the rate increase or decrease is filed prior to July 1, 1980;

(ii) the common carrier by railroad notifies the Commission that it wishes to have the rate considered pursuant to this subdivision; and

(iii) the aggregate of increases or decreases in any rate filed pursuant to clause (i) or (ii) of this subdivision during any calendar year is not greater than 7 per centum of the rate in effect on January 1 of that year.

(d) The Commission may not suspend a rate under this paragraph unless it appears from specific facts shown by the verified complaint of any person that—

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

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

The burden of proof shall be upon the complainant to establish the matters set forth in clauses (i) and (ii) of this subdivision. Nothing in this paragraph shall be construed as establishing a presumption that any rate increase or decrease in excess of the limits set forth in clause (iii) of subdivision (c) is unlawful or should be suspended.

(e) If a hearing is initiated under this paragraph with respect to a proposed increased rate, fare, or charge, and if the schedule is not suspended pending such hearing and the decision thereon, the Commission shall require the railroads involved to keep an account of all amounts received because of such increase from the date such rate, fare, or charge became effective until the Commission issues an order or until 7 months after such date, whichever first occurs, or, if the hearings are extended pursuant to subdivision (a), until an order issues or until 10 months elapse, whichever first occurs. The account shall specify by whom and on whose behalf the amounts are paid. In its final order, the Commission shall require the common carrier by railroad to refund to the person on whose behalf the amounts were paid that portion of such increased rate, fare, or charge found to be not justified, plus interest at a rate which is equal to the average yield (on the date such schedule is filed) of marketable securities of the United States which have a duration of 90 days. With respect to any proposed decreased rate, fare, or charge which is suspended, if the decrease or any part thereof is ultimately found to be lawful, the common carrier by railroad may refund any part of the portion of such decreased rate, fare, or charge found justified if such carrier makes such a refund available on an equal basis to all shippers who participated in such rate, fare, or charge according to the relative amounts of traffic shipped at such rate, fare, or charge.

(f) In any hearing under this section, the burden of proof is on the common carrier by railroad to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable. The Commission shall specifically consider, in any such hearing, proof that such proposed changed rate, fare, charge, classification, rule, regulation, or practice will have a significantly adverse effect (in violation of section 2 or 3 of this Appendix) on the competitive posture of shippers or consignees affected thereby. The Commission shall give such hearing and decision preference over all other matters relating to railroads pending before the Commission and shall make its decision at the earliest practicable time.

(9) Commission to investigate lawfulness of rates with respect to market dominance of common carrier by railroad; conclusiveness of findings; suspensions

Following promulgation of standards under section 1(5)(d) of this Appendix, whenever a rate of a common carrier by railroad subject to this chapter is challenged as being unreasonably high, the Commission shall, upon complaint or upon its own initiative and within 90 days after the commencement of a proceeding to investigate the lawfulness of such rate, determine whether the carrier proposing such rate has market dominance, within the meaning of section 1(5)(c)(i) of this Appendix, over the service to which such rate applies. If the Commission finds that such a carrier does not have such market dominance, such finding shall be determinative in all additional or other proceedings under this Act concerning such rate or service, unless (a) such finding is modified or set aside by the Commission, or (b) such finding is set aside by a court of competent jurisdiction. Nothing in this paragraph shall limit the Commission's power to suspend a rate pursuant to this section, except that if the Commission has found that a carrier does not have such market dominance over the service to which a rate applies, the Commission may not suspend any increase in such rate on the ground that such rate as increased exceeds a just or reasonable maximum for such service, unless the Commission specifically modifies or sets aside its prior determination concerning market dominance over the service to which such rate applies.

(10) Shipper's choice of route to be observed

In all cases where at the time of delivery of property to any railroad corporation being a common carrier for transportation subject to the provisions of this chapter to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this chapter provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the

same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

(11) Liability of carriers where property is delivered contrary to routing instructions

Whenever property is diverted or delivered by one carrier to another carrier contrary to routing instructions in the bill of lading, unless such diversion or delivery is in compliance with a lawful order, rule, or regulation of the Commission, such carriers shall, in a suit or action in any court of competent jurisdiction, be jointly and severally liable to the carrier thus deprived of its right to participate in the haul of the property, for the total amount of the rate or charge it would have received had it participated in the haul of the property. The carrier to which the property is thus diverted shall not be liable in such suit or action if it can show, the burden of proof being upon it, that before carrying the property it had no notice, by bill of lading, waybill or otherwise, of the routing instructions. In any judgment which may be rendered the plaintiff shall be allowed to recover against the defendant a reasonable attorney's fee to be taxed in the case.

(12) Direction of unrouted traffic by Commission

With respect to traffic not routed by the shipper, the Commission may, whenever the public interest and a fair distribution of the traffic require, direct the route which such traffic shall take after it arrives at the terminus of one carrier or at a junction point with another carrier, and is to be there delivered to another carrier.

(13) Disclosure or solicitation of information concerning shipments unlawful; exceptions

It shall be unlawful for any common carrier subject to the provisions of this chapter, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided,* That nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal court, or to any officer or agent of the Government of the United States or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

(14) Penalty for violation of preceding provisions

Any person, corporation, or association violating any of the provisions of paragraph 13 of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than $1,000.

(15) Allowance for service or facilities furnished by shipper

If the owner of property transported under this chapter directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter and shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

(16) Other powers of Commission not excluded

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this chapter.

(17) Standards and expeditious procedures for establishment of rates based on seasonal, regional, or peak-period demand for rail services; annual report

Within 1 year after February 5, 1976, the Commission shall establish, by rule, standards and expeditious procedures for the establishment of railroad rates based on seasonal, regional, or peak-period demand for rail services. Such standards and procedures shall be designed to (a) provide sufficient incentive to shippers to reduce peak-period shipments, through rescheduling and advance planning; (b) generate additional revenues for the railroads; and (c) improve (i) the utilization of the national supply of freight cars, (ii) the movement of goods by rail, (iii) levels of employment by railroads, and (iv) the financial stability of markets served by railroads. Following the establishment of such standards and procedures, the Commission shall prepare and submit to the Congress annual reports on the implementation of such rates, including recommendations with respect to the need, if any, for additional legislation to facilitate the establishment of such demand-sensitive rates.

(18) Expeditious procedures for separate rates for distinct rail services

In order to encourage competition, to promote increased reinvestment by railroads, and to encourage and facilitate increased nonrailroad investment in the production of rail services, a carrier by railroad subject to this chapter may, upon its own initiative or upon the request of any shipper or receiver of freight, file separate rates for distinct rail services. Within 1 year after February 5, 1976, the Commission shall establish, by rule, expeditious procedures for permitting publication of separate rates for distinct rail services in order to (a) encourage the pricing of such services in accordance with the carrier's cash-outlays for such services and the demand therefor, and (b) enable shippers and receivers to evaluate all transportation and related charges and alternatives.

(19) Establishment of rate incentives for capital investment

Notwithstanding any other provision of law, a common carrier by railroad subject to this chapter may file with the Commission a notice of intention to file a schedule stating a new rate, fare, charge, classification, regulation, or practice whenever the implementation of the proposed schedule would require a total capital investment of $1,000,000 or more, individually or collectively, by such carrier, or by a shipper, receiver, or agent thereof, or an interested third party. The filing shall be accompanied by a sworn affidavit setting forth in detail the anticipated capital investment upon which such filing is based. Any interested person may request the Commission to investigate the sched-

ule proposed to be filed, and upon such request the Commission shall hold a hearing with respect to such schedule. Such hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Unless, prior to the 180-day period following the filing of such notice of intention, the Commission determines, after a hearing, that the proposed schedule, or any part thereof, would be unlawful, such carrier may file the schedule at any time within 180 days thereafter to become effective after 30 days' notice. Such a schedule may not, for a period of 5 years after its effective date, be suspended or set aside as unlawful under section 1, 2, 3, or 4 of this Appendix, except that the Commission may at any time order such schedule to be revised to a level equaling the variable costs of providing the service, if the rate stated therein is found to reduce the going concern value of the carrier.

(Feb. 4, 1887, ch. 104, pt. I, § 15, 24 Stat. 384; June 29, 1906, ch. 3591, § 4, 34 Stat. 589; June 18, 1910, ch. 309, § 12, 36 Stat. 551; Feb. 28, 1920, ch. 91, §§ 418–421, 41 Stat. 484–488; Mar. 4, 1927, ch. 510, § 2, 44 Stat. 1447; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 10(a)–(d), 54 Stat. 911, 912; Feb. 5, 1976, Pub. L. 94–210, title II, §§ 201, 202(c)–(e), 203(a), 206, title III, § 302, 90 Stat. 34–37, 39, 41, 48; Oct. 19, 1976, Pub. L. 94–555, title II, § 220(m), 90 Stat. 2630; Nov. 8, 1978, Pub. L. 95–607, title IV, § 401, 92 Stat. 3067.)

§ 15a. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 15a. Fair return for carriers

(1) "Rates" defined

When used in this section, the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

(2) Ratemaking criteria; nonapplicability to common carriers by railroad subject to chapter

In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. This paragraph shall not apply to common carriers by railroad subject to this chapter.

(3) Competition between carriers of different modes of transportation; nonapplicability to common carriers by railroad subject to chapter

In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act. This paragraph shall not apply to common carriers by railroad subject to this chapter.

(4) Revenue levels of common carriers by railroad; standards and procedures for establishment

With respect to common carriers by railroad, the Commission shall, within 24 months after February 5, 1976, after notice and an opportunity for a hearing, develop and promulgate (and thereafter revise and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels 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) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels. No rate of a common carrier by railroad shall be held up to a particular level to protect the traffic of any other carrier or mode of transportation, unless the Commission finds that such rate reduces or would reduce the going concern value of the carrier charging the rate.

(5) Consideration of allegations of change in rate relationships between commodities, ports, etc., and effect on competitive position of shippers or consignees by proposed rate increase or decrease

The Commission shall, in any proceeding which involves a proposed increase or decrease in railroad rates, specifically consider allegations that such increase or decrease would change the rate relationships between commodities, ports, points, regions, territories, or other particular descriptions of traffic (whether or not such relationships were previously considered or approved by the Commission) and allegations that such increase or decrease would have a significantly adverse effect on the competitive position of shippers or consignees served by the railroad proposing such increase or decrease. If the Commission finds that such allegations as to change or effect are substantially supported on the record, it shall take such steps as are necessary, either before or after such proposed increase or decrease becomes effective and either within or outside such proceeding, to investigate the lawfulness of such change or effect.

(6) Adjustment of interstate rates

(a) Duty of Commission; petitions; requirements and considerations

The Commission shall by rule, on or before August 1, 1973, establish requirements for petitions for adjustment of interstate rates of common carriers subject to this chapter based upon increases in expenses of such carriers resulting from any increases in taxes under the Railroad Retirement Tax Act, as amended [26 U.S.C. 3201 et seq.], occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973. Such requirements, established pursuant to section 553 of title 5 (with time for comment limited so as to meet the required date for establishment and subject to future amendment or revocation), shall be designed to facilitate fair and expeditious action on any such petition as required in subparagraph (b) of this paragraph by disclosing such information as the amount needed in rate increases to offset such increases in expenses and the availability of means other than a rate increase by which the carrier might absorb or offset such increases in expenses.

(b) Interim rates; public notice requirement

Notwithstanding any other provision of law, the Commission shall, within thirty days of the filing of a verified petition in accordance with rules promulgated under subparagraph (a) of this paragraph, by any carrier or group of carriers subject to this chapter, permit the establishment of increases in the general level of the interstate rates of said carrier or carriers in an amount approximating that needed to offset increases

in expenses theretofore experienced or demonstrably certain to occur commencing on or before the effective date of the increased rates, as a result of any increases in taxes under the Railroad Retirement Tax Act, as amended [26 U.S.C. 3201 et seq.], occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973. Such increases in rates may be made effective on not more than thirty nor less than ten days' notice to the public, notwithstanding any outstanding orders of the Commission. To the extent necessary to effectuate their establishment, rates so increased shall be relieved from the provisions of section 4 of this Appendix and may be published in tariff supplements of the kind ordinarily authorized in general increase proceedings.

(c) Final rate determination; hearings, burden of proof; general ratemaking criteria; refunds, interest rate

The Commission shall within sixty days from the date of establishment of interim rates under subparagraph (b) of this paragraph commence hearings for the purpose of making the final rate determination. The Commission shall then proceed to make such final rate determination with the carrier having the burden of proof. In making such determination, the Commission may take into account all factors appropriate to ratemaking generally under this chapter and shall determine such final rates under the standards and limitations applicable to ratemaking generally under this chapter. If the increases in rates finally authorized by the Commission are less than the increases in rates initially made effective, the carrier or carriers shall, subject to such tariff provisions as the Commission shall deem sufficient, make such refunds (in the amount by which the initially increased rate collected exceeds the finally authorized increased rate) as may be ordered by the Commission, plus a reasonable rate of interest as determined by the Commission. Nothing contained in this paragraph shall limit or otherwise affect the authority of the Commission to authorize or permit to become effective any increase in rates other than the increases herein specified.

(d) Adjustment of intrastate rates

(A) Duty of State authority; petitions; interim rates; refunds, interest

The State authority having jurisdiction over petitions for intrastate rate increases by any carrier or group of carriers subject to this chapter shall, within 60 days of the filing of a verified petition for such increases based upon increases in expenses of such carriers as a result of any increases in taxes under the Railroad Retirement Tax Act, as amended [26 U.S.C. 3201 et seq.], occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973, act upon said petition. Such State authority may grant an interim rate increase or a final rate increase. If such State authority grants any interim rate increases, it shall thereafter investigate and determine the reasonableness of such increases and modify them to the extent required by applicable law. To the extent that any such interim increases are reduced as a result of the action of a State authority, the carrier or carriers shall make such refunds (in the amount by which the initially increased rate collected exceeds the finally authorized increased rate) as may be ordered by such State authority, plus a reasonable rate of interest as determined by the State authority.

(B) Action by Commission where complete denial or absence of timely action by State authority; grant of interim rates by Commission; final rate determination by State authority, refunds

If a State authority denies in toto such a petition filed with it by such carrier or group of carriers seeking relief regarding such intrastate rate increases or does not act finally on such petition within 60 days from the presentation thereof, the Commission shall, within 30 days of the filing of a verified petition by such carrier or group of carriers relating to such intrastate rates, act upon such petition by applying the ratemaking criteria of subparagraph (c) of this paragraph. If the Commission grants, in whole or in part, such petition by any carrier or group of carriers, the increase authorized shall be considered as an interim rate increase as provided in subparagraph (A) above and shall be subject to final determination by the State authority in accordance with the procedures prescribed for interim intrastate rate increases as provided above, including the ordering of refunds by such State authority.

(C) Action by Commission where partial denial by State authority results in discrimination

If a State authority denies in part such a petition filed with it by such carrier or group of carriers, within 60 days from the presentation thereof, the Commission shall, within 30 days of the filing of a verified petition by such carrier or group of carriers relating to the intrastate rates involved, act upon such petition by applying the criteria of section 13(4) of this Appendix.

(D) Stay of refund pending final order under section 13(4)

Nothing in subparagraph (A) or (B) shall be construed to abrogate the authority of the Commission under section 13(4) of this Appendix and in the event a carrier or group of carriers subject to a refund requirement under subparagraph (A) or (B) files a petition under section 13(3) of this Appendix, the refund requirement shall be stayed pending final order of the Commission under section 13(4) of this Appendix.

(E) Reasonable level for increased freight rates; preservation of market patterns and relationships and port relationships

Any increased freight rates authorized shall not exceed a reasonable level by types of traffic, commodities, or commodity groups and shall preserve existing market patterns and relationships and present port relationships by increase [increased] limitations within and between the major districts to the extent possible without authorizing unreasonable increases in any district.

(Feb. 4, 1887, ch. 104, pt. I, § 15a, as added Feb. 28, 1920, ch. 91, § 422, 41 Stat. 488, and amended June 16, 1933, ch. 91, title II, § 205, 48 Stat. 220; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 10(e), 54 Stat. 912; Aug. 12, 1958, Pub. L. 85-625, § 6, 72 Stat. 572; July 10, 1973, Pub. L. 93-69, title II, § 201, 87 Stat. 166; Feb. 5, 1976, Pub. L. 94-210, title II, §§ 203(b), 205, 90 Stat. 39, 41.)

§ 15b. Repealed. Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1466

Section, acts June 16, 1933, ch. 91, title II, § 206, 48 Stat. 220; Oct. 21, 1942, ch. 619, title V, § 504(c), 56 Stat. 957; Dec. 30, 1969, Pub. L. 91-172, title IX, § 951, Dec. 30, 1969, 83 Stat. 730, related to discontinuance of collection of excess income, liquidation of general railroad contingent fund, distribution of moneys, and computation of tax liabilities. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

§ 16. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 16. Orders of Commission and enforcement thereof

(1) Award of damages

If, after hearing on a complaint made as provided in section 13 of this Appendix, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this chapter for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

(2) Proceedings in courts to enforce orders; costs; attorney's fee

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a complaint setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the plaintiff shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the plaintiff shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

(3) Limitation of actions

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

(b) All complaints against carriers subject to this chapter for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subdivision (d) of this paragraph.

(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers subject to this chapter within three years from the time the cause of action accrues, and not after, subject to subdivision (d) of this paragraph, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

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

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

(f) A complaint for the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

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

(h) The provisions of this paragraph shall extend to and embrace cases in which the cause of action accrued prior to June 7, 1924, as well as cases in which the cause of action accrues thereafter, except that actions at law begun or complaints filed with the Commission against carriers subject to this chapter for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) of this paragraph if such actions shall have been begun or complaints filed prior to June 7, 1924, or within six months thereafter.

(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this chapter: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 66 of this Appendix, whichever is later.

(4) Joinder of parties; process; judgment

In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

(5) Service of order of Commission and notices of proceedings

Every order of the Commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law. In proceedings before the Commission involving the lawfulness of rates, fares, charges, classifications, or practices, service of notice upon an attorney in fact of a carrier who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier, except where the carrier has designated an agent in the city of Washington, District of Columbia, upon whom service of notices and processes may be made, as provided in section 50 of this title: *Provided,* That in such proceedings service of notice of the suspension of a tariff or schedule upon an attorney in fact of a carrier who has filed said tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier, and service of notice of the suspension of a joint tariff or schedule upon a carrier which has filed said joint tariff or schedule to which another carrier is a party shall be deemed to be due and sufficient notice upon the several carriers parties thereto. Such service of notice may be made by mail to such attorney in fact or carrier at the address shown in the tariff or schedule.

(6) Suspension or modification of orders

The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

(7) Compliance with orders

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

(8) Failure of carrier or officer to obey orders; penalty

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of sections 3, 13, or 15 of this Appendix shall forfeit to the United States the sum of $5,000 for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

(9) Suit for recovery of forfeiture

The forfeiture provided for in this chapter shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

(10) United States attorneys to prosecute for forfeitures; costs and expenses

It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

(11) Employment of attorneys by Commission

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(12) Proceedings to enforce orders other than for payment of money

If any carrier fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney General, may apply to any district court of the United States of competent jurisdiction for the enforcement of such order. If, after hearing, such court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, such court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

(13) Copies of schedules, tariffs, contracts, etc., kept as public records; evidence

The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the Commission as required under the provisions of this chapter shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals.

(Feb. 4, 1887, ch. 104, pt. I, § 16, 24 Stat. 384; Mar. 2, 1889, ch. 382, § 5, 25 Stat. 859; June 29, 1906, ch. 3591, § 5, 34 Stat. 590; June 18, 1910, ch. 309, § 13, 36 Stat. 554; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Oct. 22, 1913, ch. 32, 38 Stat. 219; Feb. 28, 1920, ch. 91, §§ 423–429, 41 Stat. 491, 492; June 7, 1924, ch. 325, 43 Stat. 633; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 11(a), (b), 54 Stat. 912, 913; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Aug. 2, 1949, ch. 379, § 6, 63 Stat. 486; Aug. 26, 1958, Pub. L. 85–762, § 1(1), (2), 72 Stat. 859.)

§ 16a. Repealed. Sept. 18, 1940, ch. 722, title I, § 12, 54 Stat. 913

Section, act Feb. 4, 1887, ch. 104, pt. I, § 16a, as added June 29, 1906, ch. 3591, § 6, 34 Stat. 592, related to rehearings by Commission. See section 17 of this Appendix.

§ 17. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470; Pub. L. 96–258, § 3(b), June 3, 1980, 94 Stat. 427

Section repealed subject to an exception related to transportation of oil by pipeline. Section 5 of Pub. L. 95–611, which amended par. (9)(f)(i) of this section subsequent to the repeal of this section by Pub. L. 95–473, was repealed by Pub. L. 96–258. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 17. Commission procedure; delegation of duties; rehearings

(1) Divisions of Commission; organization; composition

The Commission is authorized by its order to divide the members thereof into as many divisions (each to consist of not less than three members) as it may deem necessary, which may be changed from time to time. Such divisions shall be designated, respectively, division one, division two, and so forth, or by a term descriptive of the principal subject, work, business, or function assigned or referred to such divisions. The Commission may designate one or more of its divisions as appellate divisions. Any Commissioner may be assigned to such division or divisions as the Commission may direct, and the senior in service of the Commissioners constituting a division shall act as chairman thereof unless otherwise directed by the Commission. When a vacancy occurs in any division or when a Commissioner because of absence, or other cause, is unable to serve thereon, the Chairman of the Commission or any Commissioner designated by him for that purpose may serve temporarily on such division until the Commission otherwise orders.

(2) Reference of matters to divisions, individual Commissioners or boards

The Commission may by order direct that any of its work, business, or functions under any provision of law (except matters required to be referred to joint boards by section 305 of this Appendix, and except functions vested in the Commission under this section), or any matter which shall have been or may be referred to it by Congress or by either branch thereof, be assigned or referred to any division, to an individual Commissioner, or to a board to be composed of three or more eligible employees of the Commission (hereinafter in this section called a "board") to be designated by such order, for action thereon, and the Commission may by order at any time amend, modify, supplement, or rescind any such assignment or reference. The following classes of employees shall be eligible for designation by the Commission to serve on such boards: examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys. The assignment or reference, to divisions, of work, business, or functions relating to the lawfulness of rates, fares,

or charges shall be made according to the character of regulation to be exercised and not according to the kind or class of the carriers involved or to the form or mode of transportation in which such carriers may be engaged. When an individual Commissioner, or any employee, is unable to act upon any matter so assigned or referred because of absence or other cause, the Chairman of the Commission may designate another Commissioner or employee, as the case may be, to serve temporarily until the Commission otherwise orders.

(3) Conduct of proceedings; seal; oaths; quorum; rules

The Commission shall conduct its proceedings under any provision of law in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The Commission shall have an official seal, which shall be judicially noticed. Any member of the Commission, the Secretary of the Commission, or any member of a board may administer oaths and affirmations and any member of the Commission or the Secretary of the Commission (or any member of a board in connection with the performance of any work, business, or functions referred under this section to a board upon which he serves) may sign subpenas. A majority of the Commission, of a division, or of a board shall constitute a quorum for the transaction of business. The Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division, individual Commissioner, or board, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before the Commission or any division, individual Commissioner, or board and be heard in person or by attorney. Every vote and official act of the Commission, or of any division, individual Commissioner, or board, shall be entered of record, and such record shall be made public upon the request of any party interested. All hearings before the Commission, a division, individual Commissioner, or board shall be public upon the request of any party interested. No Commissioner or employee shall participate in any hearing or proceeding in which he shall have any pecuniary interest.

(4) Powers of divisions, boards, etc.; effect of orders, etc.

A division, an individual Commissioner, or a board shall have authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred thereto under the provisions of this section, and with respect thereto shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. The secretary and seal of the Commission shall be the secretary and seal of each division, individual Commissioner, or board. Except as otherwise provided in this section, any order, decision, or requirement of a division, an individual Commissioner, or a board, with respect to any matter so assigned or referred, shall have the same force and effect, and may be made and evidenced in the same manner as if made or taken by the Commission.

(5) Findings, etc., of Commissioner or board; accompanying statement and recommended order; copies to parties; exceptions; recommended order as Commission's order; delegation of duties to employee boards

Any finding, report, or requirement of an individual Commissioner or board, with respect to any matter so assigned or referred involving the taking of testimony at a public hearing, shall be accompanied by a statement in writing of the reasons therefor, together with a recommended order, which shall be filed with the Commission. Copies thereof shall be served upon interested parties (including, in proceedings under chapter 8 of this Appendix, persons specified in section 305(e) of this Appendix), who may file exceptions thereto, but if within twenty days after service upon such persons, or within such further period as the Commission or a duly designated division thereof may authorize, no exceptions shall have been filed, such recommended order shall become the order of the Commission and become effective unless within such period the order shall have been stayed or postponed by the Commission or by a duly designated division thereof. The Commission, or a duly designated division thereof, upon its own motion may, and where exceptions are filed it shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed or postponed pending final determination thereof. When deemed by the Commission to be appropriate for the efficient and orderly conduct of its business, it may authorize duly designated employee boards to perform, under this paragraph, functions of the same character as those which may be performed thereunder by duly designated divisions.

(6) Rehearing, reargument, or reconsideration of decisions, orders, and requirements

After a decision, order, or requirement shall have been made by the Commission, a division, and individual Commissioner, or a board, or after an order recommended by an individual Commissioner or a board shall have become the order of the Commission as provided in paragraph (5) of this section, any party thereto may at any time, subject to such limitations as may be established by the Commission as hereinafter authorized, make application for rehearing, reargument, or reconsideration of the same, or of any matter determined therein. Such applications shall be governed by such general rules as the Commission may establish. Any such application, if the decision, order, or requirement was made by the Commission, shall be considered and acted upon by the Commission. If the decision, order, or requirement was made by a division, an individual Commissioner, or a board, such application shall be considered and acted upon by the Commission or referred to an appropriate appellate division for consideration and action. Rehearing, reargument, or reconsideration may be granted if sufficient reason therefor be made to appear; but the Commission may, from time to time, make or amend general rules or orders establishing limitations upon the right to apply for rehearing, reargument, or reconsideration of a decision, order, or requirement of the Commission or of a division so as to confine such right to proceedings, or classes of proceedings, involving issues of general transportation importance. Notwithstanding the foregoing provisions of this paragraph, any application for rehearing, reargument, or reconsideration of a matter assigned or referred to an individual Commissioner or a board, under the provisions of paragraph (2) of this section, if such application shall have been filed within twenty days after the recommended order in the proceeding shall have become the order of the Commission as provided in paragraph (5) of this section, and if such matter shall not have been reconsidered or reheard as provided in said paragraph, shall be referred to an appropriate appellate division of the Commission and such division shall reconsider the matter either upon the same record or after a further hearing.

(7) Reversal or modification after rehearing, etc.

If after rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission or appellate division may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after rehearing, reargument, or reconsideration, reversing, changing, or modifying the original determination shall be subject to the same provisions with respect to rehearing, reargument, or reconsideration as an original order.

(8) Stay of decisions, etc., not effective at time of application for rehearing, etc.

Where application for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board is made in accordance with the provisions of this section and the rules and regulations of the Commission, and the decision, order, or requirement has not yet become effective, the decision, order, or requirement shall be stayed or postponed pending disposition of the matter by the Commission or appellate division; but otherwise the making of such an application shall not excuse any person from complying with or obeying the decision, order, or requirement, or operate to stay or postpone the enforcement thereof, without the special order of the Commission.

(9) Administrative hearing and review procedures for decisions, orders, reports, etc.; judicial relief; applicability

(a) Whenever the term "hearing" is used in this chapter, such term shall be construed to include an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties, such conferences to be chaired by a division, an individual Commissioner, an administrative law judge, an employee board, or any other designated employee of the Commission.

(b) With respect to any matter involving a common carrier by railroad subject to this chapter, whenever the Commission assigns the initial disposition to any of such matter before the Commission to an administrative law judge, individual Commissioner, employee board, or division or panel of the Commission, such judge, Commissioner, board, division, or panel shall—

(i) complete all evidentiary proceedings with respect to such matter within 180 days after its assignment; and

(ii) with respect to any matter so assigned which involves written submissions or the taking of testimony at a public hearing, submit in writing to the Commission, within 120 days after the completion of all evidentiary proceedings, an initial decision, report, or order containing—

(A) specific findings of fact;

(B) specific and separate conclusions of law;

(C) a recommended order; and

(D) any justification in support of such findings of fact, conclusions of law, and order.

The Commission, or a duly designated division thereof, may, in its discretion, void any requirement for an initial decision, report, or order, and, in appropriate cases, may direct that any matter shall be considered forthwith by the Commission or such division, if it concludes that the matter involves a question of agency policy, a new or novel issue of law, or an issue of general transportation importance, or if the due and timely execution of its functions so requires. Whenever an initial decision, report, or order is submitted, copies thereof shall be served upon interested parties. Any such party may file an appeal with the Commission, with respect to such initial decision or report. If no such appeal is filed within 20 days after such service, or within such further period (not to exceed 20 days) as the Commission, or a duly designated division thereof, may authorize, the order set forth in such initial decision or report shall become the order of the Commission and shall become effective unless, within such period, the order shall have been stayed or postponed by the Commission pursuant to subdivision (d) or (e).

(c) The Commission, or a duly designated division thereof, may, upon its own initiative, and shall, in any case in which an appeal is filed under subdivision (b), review the matter upon the same record or upon the basis of a further hearing. Any such appeal shall be considered and acted upon by the Commission, or a duly designated division thereof, within 180 days after the date on which such appeal is filed. Any such decision, report, or order shall be stayed pending the determination of such appeal. Such a review shall be conducted in accordance with section 557 of title 5, and such rules (limiting and defining the issues and pleadings upon review) as the Commission may adopt in conformance with section 557(b) of such title 5. The Commission may, in its discretion and on such terms and conditions as it may prescribe, authorize duly designated employee boards to perform functions under this paragraph of the same character as those which may be performed by a duly designated division of the Commission (other than the decision of any appeal under this paragraph which may be further appealed to the Commission).

(d) Any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall become effective 30 days after it is served on the parties thereto, unless the Commission provides for such decision, order, or requirement, or any applicable rule, to become effective at an earlier date. Any interested party to a decision, order or requirement of a duly designated division of the Commission may petition the Commission for rehearing, reargument, or other reconsideration, subject to such rules and limitations as the Commission may establish. If the Commission finds that a decision, order, or requirement presents a matter of general transportation importance, or if it finds that clear and convincing new evidence has been presented or that changed circumstances exist which would materially affect such decision, order, or requirement, the Commission may reconsider such decision, order, or requirement, and it may, in its discretion, stay the effective date of such decision, order, or requirement. If the Commission reconsiders a decision, order, or requirement, it must complete the process and issue its final order not more than 120 days after the date on which it grants the application for reconsideration.

(e) The Commission may, in its discretion, extend any time period set forth in this paragraph for a period of not more than 90 days, if a majority of the Commissioners, by public vote, agree to such extension. The Commission shall submit an annual report in writing to each House of Congress setting forth each extension granted pursuant to this subdivision (classified by the type of proceeding involved), and stating the reasons for each such extension and the duration thereof.

(f) In extraordinary situations in which an extension granted pursuant to subdivision (e) is not sufficient to allow for completion of necessary proceedings, the Commission may, in its discretion, grant a further extension if—

(i) a majority of the Commissioners, by public vote, agree to such further extension; and

(ii) not less than 15 days prior to expiration of the extension granted pursuant to subdivision (e), the Commission reports in writing to the Congress that such further extension has been granted, together with—

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

(B) the anticipated duration of such further extension;

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

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

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

(i) reopen any proceeding;

(ii) grant rehearing, reargument, or reconsideration with respect to any decision, order, or requirement; and

(iii) reverse, modify, or change any decision, order, or requirement.

The Commission may establish rules allowing interested parties to petition for leave to request reopening

and reconsideration based upon material error, new evidence, or substantially changed circumstances.

(h) Notwithstanding any other provision of this Act, any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall be final on the date on which it is served. A civil action to enforce, enjoin, suspend, or set aside such a decision, order, or requirement, in whole or in part, may be brought after such date in a court of the United States pursuant to the provisions of law which are applicable to suits to enforce, enjoin, suspend, or set aside orders of the Commission.

(i) Notwithstanding the provisions of paragraphs (5), (6), (7), and (8), of this section, the provisions of this paragraph shall govern the disposition of, and shall apply only to, any matter before the Commission which involves a common carrier by railroad subject to this chapter, except that the provisions of other sections of this chapter pertaining to deadlines in Commission proceedings shall govern to the extent that they are inconsistent with the provisions pertaining to deadlines contained in this paragraph.

(j) Reports in writing and other written statement (including, but not limited to, any report, order, decision and order, vote, notice, letter, policy statement, rule, or regulation) of any official action of the Commission (whether such action is taken by the Commission, a division thereof, any other group of Commissioners, a single Commissioner, an employee board, an administrative law judge, or any other individual or group of individuals who are authorized to take any official action on behalf of the Commission) shall indicate (i) the official designation of the individual or group taking such action (ii) the name of each individual taking, or participating in taking, such action, and (iii) the vote or position of each such participating individual. If any individual who is officially designated as a member of a group which takes any such action does not participate in such action, the written statement of such action shall indicate that such individual did not participate. Each individual who participates in taking any such action shall have the right to express his individual views as part of the written statement of such action. The written statement of any such action shall be made available to the public in accordance with Federal law.

(10) Judicial relief from decisions, etc., upon denial or other disposition of application for rehearing, etc.

When an application for rehearing, reargument, or reconsideration of any decision, order, or requirement of a division, an individual Commissioner, or a board with respect to any matter assigned or referred to him or it shall have been made and shall have been denied, or after rehearing, reargument, or reconsideration otherwise disposed of, by the Commission or an appellate division, a suit to enforce, enjoin, suspend, or set aside such decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise.

(11) Reference of administrative matters to examiners

Any matter arising in the administration of chapter 8 of this Appendix as to which a hearing is to be held may be referred to an examiner of the Commission, for action thereon, subject to the conditions and limitations provided in this section in the case of reference of work, business or functions, as to which a hearing is to be held, to an individual Commissioner or board.

(12) Intervention of representatives of employees

Representatives of employees of a carrier, duly designated as such, may intervene and be heard in any proceeding arising under this chapter and chapters 8 and 12 of this Appendix affecting such employees.

(13) Admission to practice before Commission

The Commission is authorized to promulgate reasonable rules and regulations relating to admission to practice before it, and is authorized to impose a reasonable fee for such admission, and such fees shall be covered into the Treasury of the United States as miscellaneous receipts.

(14) Formal investigative proceedings; conclusion or termination requirements

(a) Any formal investigative proceeding with respect to a common carrier by railroad which is instituted by the Commission after February 5, 1976, shall be concluded by the Commission with administrative finality within 3 years after the date on which such proceeding is instituted. Any such proceeding which is not so concluded by such date shall automatically be dismissed.

(b) Within 1 year after February 5, 1976, the Commission shall conclude or terminate, with administrative finality, any formal investigative proceeding with respect to a common carrier by railroad which was instituted by the Commission on its own initiative and which has been pending before the Commission for a period of 3 or more years following the date of the order which instituted such proceeding.

(15) Access to information by Congressional committees; procedures; limitations; definition

Whenever 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 documents which are in the possession or under the control of the Commission and which relate to any matter involving a common carrier by railroad subject to this chapter, the Commission shall, within 10 days after the date of receipt of such request, submit such documents (or copies thereof) to such committee, or submit a report in writing to such committee stating the reason why such documents have not been so submitted, and the anticipated date on which they will be submitted. If the Commission transfers any document in its possession or under its control to any other agency or to any person, it shall condition such transfer on the guaranteed return by the transferee of such document to the Commission for purposes of complying with the preceding sentence. This paragraph shall not apply to documents which have been obtained by the Commission from persons subject to regulation by the Commission, and which contain trade secrets or commercial or financial information of a privileged or confidential nature. This paragraph shall not be deemed to restrict any other authority of either House of Congress, or any committee or subcommittee thereof, to obtain documents. For purposes of this paragraph, the term "document" means any book, paper, correspondence, memorandum, or other record, or any copy thereof.

(Feb. 4, 1887, ch. 104, pt. I, § 17, 24 Stat. 385; Mar. 2, 1889, ch. 382, § 6, 25 Stat. 861; Aug. 9, 1917, ch. 50, § 2, 40 Stat. 270; Feb. 28, 1920, ch. 91, §§ 430–432, 41 Stat. 492, 493; Feb. 28, 1933, ch. 136, 47 Stat. 1368; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 12, 54 Stat. 913; Sept. 14, 1961, Pub. L. 87-247, 75 Stat. 517; Feb. 5, 1976, Pub. L. 94-210, title III, §§ 301, 303, 90 Stat. 47, 48, 50; Oct. 19, 1976, Pub. L. 94-555, title II, § 220(j), 90 Stat. 2630; S. Res. 4, Feb. 4, 1977; Nov. 8, 1978, Pub. L. 95-611, § 5, 92 Stat. 3090.)

§ 18. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 18. Employees; appointment and compensation; witness fees; expenses

(1) Commissioners' salaries; secretary and employees; compensation; witness fees

Each commissioner shall receive an annual salary, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(2) Expenses of Commission

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

(Feb. 4, 1887, ch. 104, pt. I, §§ 17, 18, 24, 24 Stat. 386, 387; Mar. 2, 1889, ch. 382, § 7, 25 Stat. 861; June 29, 1906, ch. 3591, § 8, 34 Stat. 595; Aug. 9, 1917, ch. 50, §§ 1–3, 40 Stat. 270; Feb. 28, 1920, ch. 91, §§ 433, 440, 41 Stat. 493, 497.)

§ 19. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 19. Office and sessions

The principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this chapter.

(Feb. 4, 1887, ch. 104, pt. I, § 19, 24 Stat. 386; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

§ 19a. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 19a. Valuation of property of carriers

(a) Physical valuation of property of carriers; classification and inventory

The Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this chapter, except any street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation; but the Commission may in its discretion investigate, ascertain, and report the value of the property owned or used by any such electric railway subject to the provisions of this chapter whenever in its judgment such action is desirable in the public interest. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall, subject to the exception hereinbefore provided for in the case of electric railways, make an inventory which shall list the property of every common carrier subject to the provisions of this chapter in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

(b) Cost of property; elements considered in determination; gifts, grants, etc.

First. In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purpose of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

Fifth. The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any State, county, or municipal government, or by individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any State, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, also, the amount and value of any concession and allowance made by such common carrier

to the Government of the United States, or to any State, county, or municipal government in consideration of such aid, gift, grant, or donation.

(c) Investigation; procedure and forms

Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

(d) Time for beginning investigation; reports to Congress

Such investigation shall be commenced within sixty days after March 1, 1913, and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session until completed.

(e) Aid of carrier required; rules and regulations; inspection of records

Every common carrier subject to the provisions of this chapter shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right-of-way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section 20 of this Appendix shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

(f) Valuation of extensions and improvements; revisions; reports

Upon completion of the original valuations herein provided for, the Commission shall thereafter keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of all common carriers as to which original valuations have been made, and of the cost of all additions and betterments thereto and of all changes in the investment therein, and may keep itself informed of current changes in costs and values of railroad properties, in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories, classifications, and values of the properties; and when deemed necessary, may revise, correct, and supplement any of its inventories and valuations.

(g) Reports and information to be furnished by carriers

To enable the Commission to carry out the provisions of paragraph (f) of this section, every common carrier subject to the provisions of this chapter shall make such reports and furnish such information as the Commission may require.

(h) Notice of completion of tentative valuation; protests; finality of report

Whenever the Commission shall have completed the tentative valuation of the property of any common carrier, as herein directed, and before such valuation shall become final, the Commission shall give notice by registered mail or by certified mail to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

(i) Protests; hearings; changes in valuations; final valuation and classification

If notice of protest is filed the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this chapter the Commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under this chapter as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of this chapter, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

(j) Effect of evidence as to values; modification of orders

If upon the trial of any action involving a final value fixed by the Commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto and substantially affecting said value, the court, before proceeding to render judgment shall transmit a copy of such evidence to the Commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the Court. If the Commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

(k) Receivers and trustees of carriers affected; noncompliance with law; penalty

The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the Commission such carrier, receiver, or trustee shall forfeit to the United States the sum of $500 for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section 16 of this Appendix.

(*l*) Mandamus to compel compliance with law

The district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this section by any

common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section.

(Feb. 4, 1887, ch. 104, pt. I, § 19a, as added Mar. 1, 1913, ch. 92, 37 Stat. 701, and amended Feb. 28, 1920, ch. 91, § 433, 41 Stat. 493; June 7, 1922, ch. 210, §§ 1, 2, 42 Stat. 624; June 16, 1933, ch. 91, title II, §§ 207, 208, 48 Stat. 221; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; June 11, 1960, Pub. L. 86-507, § 1(38), 74 Stat. 202.)

§ 20. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 20. Reports, records, and accounts of carriers; mandamus; liability of initial carrier for loss, etc.

(1) Reports from carriers and lessors

The Commission is authorized to require annual, periodical, or special reports from carriers, lessors, and associations (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers, lessors, and associations specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, classifying such carriers, lessors, and associations as it may deem proper for any of these purposes. Such annual reports shall give an account of the affairs of the carrier, lessor, or association in such form and detail as may be prescribed by the Commission.

(2) Period covered by and time for making reports; oaths for reports

Said annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under paragraph (1) of this section, shall also be under oath whenever the Commission so requires.

(3) Uniform cost and revenue accounting and reporting system for all common carriers by railroad subject to this chapter; promulgation of regulations and procedures; effective date; criteria; review and revision of system; authorization of appropriations

(a) The Commission shall, not later than June 30, 1977, issue regulations and procedures prescribing a uniform cost and revenue accounting and reporting system for all common carriers by railroad subject to this chapter. Such regulations and procedures shall become effective not later than January 1, 1978. Before promulgating such regulations and procedures, the Commission shall consult with and solicit the views of other agencies and departments of the Federal Government, representatives of carriers, shippers, and their employees, and the general public.

(b) In order to assure that the most accurate cost and revenue data can be obtained with respect to light density lines, main line operations, factors relevant in establishing fair and reasonable rates, and other regulatory areas of responsibility, the Commission shall identify and define the following items as they pertain to each facet of rail operations:

(i) operating and nonoperating revenue accounts;

(ii) direct cost accounts for determining fixed and variable cost for materials, labor, and overhead components of operating expenses and the assignment of such 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

(iii) indirect cost accounts for determining fixed, common, joint, and constant costs, including the cost of capital, and the method for the assignment of such costs to various functions, services, or activities.

(c) The accounting system established pursuant to this paragraph shall be in accordance with generally accepted accounting principles uniformly applied to all common carriers by railroad subject to this chapter, and all reports shall include any disclosure considered appropriate under generally accepted accounting principles or the requirements of the Commission or of the Securities and Exchange Commission. The Commission shall, notwithstanding any other provision of this section, to the extent possible, devise the system of accounts to be cost effective, nonduplicative, and compatible with the present and desired managerial and responsibility accounting requirements of the carriers, and to give due consideration to appropriate economic principles. The Commission should attempt, to the extent possible, to require that such data be reported or otherwise 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.

(d) In order that the accounting system established pursuant to this paragraph continue to conform to generally accepted accounting principles, compatible with the managerial responsibility accounting requirements of carriers, and in compliance with other objectives set forth in this section, the Commission shall periodically, but not less than once every 5 years, review such accounting system and revise it as necessary.

(e) There are authorized to be appropriated to the Commission for purposes of carrying out the provisions of this paragraph such sums as may be necessary, not to exceed $1,000,000, to be available for—

(i) procuring temporary and intermittent services as authorized by section 3109(b) of title 5, but at rates for individuals not to exceed $250 per day plus expenses; and

(ii) entering into contracts or cooperative agreements with any public agency or instrumentality or with any person, firm, association, corporation, or institution, without regard to section 5 of title 41.

(4) Depreciation charges

The Commission shall, as soon as practicable, prescribe for carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. When the Commission shall have exercised its authority under the foregoing provisions of this paragraph, carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no such carrier shall include under operating expenses any depreciation charge in any form whatsoever other than as prescribed by the Commission.

(5) Forms of accounts, records, and memoranda; access to records, etc., by Commission or agents

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers and their lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys, and it shall be unlawful for such carriers or lessors to keep any accounts, records, and memoranda contrary to any rules, regulations, or

orders of the Commission with respect thereto. The Commission or any duly authorized special agent, accountant, or examiner thereof shall at all times have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents, of such carriers, lessors, and associations, and such accounts, books, records, memoranda, correspondence, and other documents, of any person controlling, controlled by, or under common control with any such carrier, as the Commission deems relevant to such person's relation to or transactions with such carrier. The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to all lands, buildings, or equipment of such carriers or lessors, and shall have authority under its order to inspect and examine any and all such lands, buildings, and equipment. Such carriers, lessors, and other persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and copying authorized by this paragraph, and such carriers and lessors shall submit their lands, buildings, and equipment to inspection and examination, to any duly authorized special agent, accountant, or examiner of the Commission, upon demand and the display of proper credentials.

(6) Persons furnishing cars or protection against elements; access to and forms of records, etc.; reports

The Commission or any duly authorized special agent, accountant, or examiner thereof shall at all times have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents, of persons which furnish cars or protective service against heat or cold to or on behalf of any carrier by railroad or express company subject to this chapter: *Provided, however,* That such authority shall be limited to accounts, books, records, memoranda, correspondence, or other documents which pertain or relate to the cars or protective service so furnished. The Commission shall further have authority, in its discretion, to prescribe the forms of any or all accounts, records, and memoranda which it is authorized by this paragraph to inspect and copy, and to require the persons furnishing such cars or protective service, as aforesaid, to submit such reports and specific and full, true, and correct answers to such questions, relative to such cars or service, as the Commission may deem necessary. Persons furnishing such cars or protective service shall submit their accounts, books, records, memoranda, correspondence, or other documents, to the extent above provided, for inspection or copying to any duly authorized special agent, accountant, or examiner of the Commission upon demand and the display of proper credentials.

(7) Penalties and forfeitures in connection with accounts, records, reports, etc.

(a) In case of failure or refusal on the part of any carrier, lessor, or other person to keep any accounts, records, and memoranda in the form and manner prescribed, under authority of this section, by the Commission, or to submit any accounts, books, records, memoranda, correspondence, or other documents to the Commission or any of its authorized agents, accountants, or examiners for inspection or copying, as required under this section, such carrier, lessor, or person shall forfeit to the United States not to exceed $500 for each such offense and for each day during which such failure or refusal continues.

(b) Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by a carrier, or required under this section to be kept by a lessor or other person, or who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, or who shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, lessor, or person, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, or shall knowingly or willfully file with the Commission any false report or other document, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment: *Provided,* That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of such carriers, lessors, or other persons as may, after a reasonable time, be destroyed, and prescribing the length of time the same shall be preserved.

(c) Any carrier or lessor, or person furnishing cars or protective service, or any officer, agent, employee, or representative thereof, who shall fail to make and file an annual or other report with the Commission within the time fixed by the Commission, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto.

(d) In case of failure or refusal on the part of any carrier or lessor to accord to the Commission or its duly authorized special agents, accountants, or examiners, access to, and opportunity for the inspection and examination of, any lands, buildings, or equipment of said carrier or lessor, as provided in this section, such carrier or lessor shall forfeit to the United States the sum of one hundred dollars for each day during which such failure or refusal continues.

(e) All forfeitures authorized in this paragraph shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this chapter.

(f) Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this section, except insofar as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than $500 or imprisonment for not exceeding six months, or both.

(8) "Keep" and "kept" defined

As used in this section, the words "keep" and "kept" shall be construed to mean made, prepared, or compiled, as well as retained; the term "carrier" means a common carrier subject to this chapter, and includes a receiver or trustee of such carrier; the term "lessor" means a person owning a railroad, a water line, or a pipe line, leased to and operated by a common carrier subject to this chapter, and includes a receiver or trustee of such lessor; and the term "association" means an association or organization maintained by or in the interest of any group of carriers subject to this chapter which performs any service, or engages in any activities, in connection with any traffic, transportation, or facilities subject to this Act.

(9) Jurisdiction to compel compliance by mandamus

The district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common

carrier to comply with the provisions of said Acts, or any of them.

(10) Special agents or examiners

And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

(11) Liability of initial and delivering carrier for loss; limitation of liability; notice and filing of claim

Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made, is declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this Appendix; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the Commission is empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice: *And provided further*, That for the purposes of this paragraph and of paragraph (12) of this section the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this chapter provided.

(12) Recovery by initial or delivering carrier from connecting carrier

The common carrier, railroad, or transportation company issuing such receipt or bill of lading, or delivering such property so received and transported, shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property.

(Feb. 4, 1887, ch. 104, pt. I, § 20, 24 Stat. 386; June 29, 1906, ch. 3591, § 7, 34 Stat. 593; Feb. 25, 1909, ch. 193, 35 Stat. 648; June 18, 1910, ch. 309, § 14, 36 Stat. 555; Mar. 4, 1915, ch. 176, § 1, 38 Stat. 1196; Aug. 9, 1916, ch. 301, 39 Stat. 441; Feb. 28, 1920, ch. 91, §§ 434–438, 41 Stat. 493, 494; July 3, 1926, ch. 761, 44 Stat. 835; Mar. 4, 1927, ch. 510, § 3, 44 Stat. 1448; Apr. 23, 1930, ch. 208, 46 Stat. 251; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 13, 54 Stat. 916; June 3, 1948, ch. 386, 62 Stat. 295; Aug. 2, 1949, ch. 379, §§ 7–9, 63 Stat. 486; Feb. 5, 1976, Pub. L. 94–210, title III, § 307, 90 Stat. 55.)

§ 20a. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see

Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 20a. Securities of carriers; issuance, etc.

(1) "Carrier" defined

As used in this section, the term "carrier" means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) which is subject to this chapter, or any corporation organized for the purpose of engaging in transportation by railroad subject to this chapter, or a sleeping-car company which is subject to this chapter.

(2) Issuance of securities; assumption of obligations; authorization

It shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose: *Provided,* That nothing in this section is to be construed as applying to securities issued or obligations or liabilities assumed by the United States or any instrumentality thereof, or by the District of Columbia or any instrumentality thereof, or by any State of the United States, or by any political subdivision or municipal corporation of any State, or by any instrumentality of one or more States, political subdivisions thereof, or municipal corporations.

(3) Scope of Commission's authority

The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the paragraph (2) of this section.

(4) Form and contents of application; oath and signature

Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application, as also every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the carrier by its president, a vice president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the carrier.

(5) Disposition of securities described in application, etc.

Whenever any securities set forth and described in any application for authority or certificate of notification as pledged or held unencumbered in the treasury of the carrier shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the carrier, such carrier shall, within ten days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

(6) Notice of application to governors of States; intervention; hearings

Upon receipt of any such application for authority the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which the applicant carrier operates. The railroad commissions, public service, or utilities commissions, or other appropriate State authorities of the State shall have the right to make before the Commission such representations as they may deem just and proper for preserving and conserving the rights and interests of their people and the States, respectively, involved in such proceedings. The Commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority.

(7) Jurisdiction of Commission as exclusive and plenary

The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified herein.

(8) Guaranty of securities

Nothing herein shall be construed to imply any guaranty or obligation as to such securities on the part of the United States.

(9) Issue of short term notes; certificate of notification; proviso

The foregoing provisions of this section shall not apply to notes to be issued by the carrier maturing not more than two years after the date thereof and aggregating (together with all other then outstanding notes of a maturity of two years or less) not more than 5 per centum of the par value of the securities of the carrier then outstanding. In the case of securities having no par value, the par value for the purposes of this paragraph shall be the fair market value as of the date of issue. Within ten days after the making of such notes the carrier issuing the same shall file with the Commission a certificate of notification, in such form as may from time to time be determined and prescribed by the Commission, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities: *Provided,* That in any subsequent funding of such notes the provisions of this section respecting other securities shall apply.

(10) Reports by carriers as to securities or proceeds

The Commission shall require periodical or special reports from each carrier issuing any securities, including such notes, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds thereof.

(11) Securities issued contrary to law void; effect; penalty

Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such an order of authori-

zation therefor as modified by any order supplemental thereto entered prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security in respect to which the assumption of obligation or liability is so made void, is acquired by any person for value and in good faith and without notice that the issue or assumption is void, such person may in a suit or action in any court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof, the carrier which issued the security so made void, or assumed the obligation or liability so made void, and its directors, officers, attorneys, and other agents, who participated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the carrier issuing it the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney, or agent of the carrier who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

(12) Restrictions on actions of officers and directors; penalty

It shall be unlawful for any person to hold the position of officer or director of more than one carrier, unless such holding shall have been authorized by order of the Commission, upon due showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. It shall be unlawful for any officer or director of any carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of an operating carrier from any funds properly included in capital account. Any violation of these provisions shall be a misdemeanor, and on conviction in any United States court having jurisdiction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

(Feb. 4, 1887, ch. 104, pt. I, § 20a, as added Feb. 28, 1920, ch. 91, § 439, 41 Stat. 494, and amended Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Aug. 2, 1949, ch. 739, § 10, 63 Stat. 487; July 24, 1965, Pub. L. 89-86, § 1, 79 Stat. 263.)

§ 20b. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 20b. Modification of railroad financial structures

(1) Approval and authorization of Commission; exclusion of equipment-trust securities

It shall be lawful (any express provision contained in any mortgage, indenture, deed of trust, corporate charter, stock certificate, or other instrument or any provision of State law to the contrary notwithstanding), with the approval and authorization of the Commission, as provided in paragraph (2) of this section, for a carrier as defined in section 20a(1) of this Appendix to alter or modify (a) any provision of any class or classes of its securities as defined in section 20a(2) of this Appendix being hereinafter in this section sometimes called "securities"; or (b) any provision of any mortgage, indenture, deed of trust, corporate charter, or other instrument pursuant to which any class of its securities shall have been issued or by which any class of its obligations is secured (hereinafter referred to as instruments): *Provided*, That the provisions of this section shall not apply to any equipment-trust certificates in respect of which a carrier is obligated, or to any evidences of indebtedness of a carrier the payment of which is secured in any manner solely by equipment, or to any instrument, whether an agreement, lease, conditional-sale agreement, or otherwise, pursuant to which such equipment-trust certificates or such evidences of indebtedness shall have been issued or by which they are secured.

(2) Application; public hearing; findings; submission of plan to security holders; order of Commission; force and effect

Whenever an alteration or modification is proposed under paragraph (1) of this section, the carrier seeking authority therefor shall, pursuant to such rules and regulations as the Commission shall prescribe, present an application to the Commission. Upon presentation of any such application, the Commission may, in its discretion, but need not, as a condition precedent to further consideration, require the applicant to secure assurances of assent to such alteration or modification by holders of such percentage of the aggregate principal amount or number of shares outstanding of the securities affected by such alternation or modification as the Commission shall in its discretion determine. If the Commission shall not require the applicant to secure any such assurances, or when such assurances, as the Commission may require shall have been secured, the Commission shall set such application for public hearing and the carrier shall give reasonable notice of such hearing in such manner, by mail, advertisement, or otherwise, as the Commission may find practicable and may direct, to holders of such of its classes of securities and to such other persons in interest as the Commission shall determine to be appropriate and shall direct. If the Commission, after hearing, in addition to making (in any case where such alteration or modification involves an issuance of securities) the findings required by paragraph (2) of section 20a of this Appendix, not inconsistent with paragraph (1) of this section shall find that, subject to such terms and conditions and with such amendments as it shall determine to be just and reasonable, the proposed alteration or modification—

(a) is within the scope of paragraph (1) of this section:

(b) will be in the public interest;

(c) will be in the best interests of the carrier, of each class of its stockholders, and of the holders of each class of its obligations affected by such modification or alteration; and

(d) will not be adverse to the interests of any creditor of the carrier not affected by such modification or alteration,

then (unless the applicant, carrier shall withdraw its application) the Commission shall cause the carrier, in such manner as it shall direct, to submit the proposed alteration or modification (with such terms, conditions, and amendments, if any) to the holders of each

class of its securities affected thereby, for acceptance or rejection. The Commission shall have the power to make such general rules and regulations and such special requirements in any particular case in respect to the solicitation of assents, opposition, assurances of assent, acceptance, approval, or disapproval of such holders (whether such solicitation is made before or after approval of the proposed alteration or modification by the Commission), as it shall deem necessary or desirable; and no solicitation shall be made, and no letter, circular, advertisement, or other communication, or financial or statistical statement, or summary thereof, shall be used in any such solicitation, in contravention of such rules, regulations, or special requirements. The Commission may direct that the assents (and any revocations thereof) of such holders to the proposed alteration or modification shall be addressed to a bank or trust company, approved by it, which is incorporated under the laws of the United States or any State thereof, and which has a capital and surplus of at least $2,000,000, and is a member of the Federal Reserve System. Any bank or trust company so approved shall certify to the Commission the result of such submission and the Commission may, in its discretion, rely upon such certification as conclusive evidence in determining the result of such submission. If the Commission shall find that as a result of such submission the proposed alteration or modification has been assented to by the holders of at least 75 per centum of the aggregate principal amount or number of shares outstanding of each class of securities affected thereby (or as to any class (i) where 75 per centum thereof is held by fewer than twenty-five holders, or (ii) which is entitled to vote for the election of directors of the carrier and the assents of the holders of 25 per centum or more thereof are determined by the Commission to be within the control of the carrier or of any person or persons controlling the carrier, such larger percentage, if any, as the Commission may determine to be just and reasonable and in the public interest), the Commission shall enter an order approving and authorizing the proposed alteration or modification upon the terms and conditions and with the amendments, if any, so determined to be just and reasonable. Such order shall make provision as to the time when such alteration or modification shall become and be binding, which may be upon publication of a declaration to that effect by the carrier, or otherwise, as the Commission may determine. Any alteration or modification which shall become and be binding pursuant to the approval and authority of the Commission hereunder shall be binding upon each holder of any security of the carrier of each class affected by such alteration or modification, and upon any trustee or other party to any instrument under which any class of obligations shall have been issued or by which it is secured, and when any alteration or modification shall become and be binding the rights of each such holder and of any such trustee or other party shall be correspondingly altered or modified.

(3) When class of securities affected; what constitutes outstanding securities; assent to modification

For the purposes of this section a class of securities shall be deemed to be affected by any modification or alteration proposed only (a) if a modification or alteration is proposed as to any provision of such class of securities, or (b) if any modification or alteration is proposed as to any provision of any instrument pursuant to which such class of securities shall have been issued or shall be secured: *Provided,* That in any case where more than one class of securities shall have been issued and be outstanding or shall be secured pursuant to any instrument, any alteration or modification proposed as to any provision of such instrument which does not relate to all of the classes of securities issued thereunder, shall be deemed to affect only the class or classes of securities to which such alteration or modification is related. For the purpose of the finding of the Commission referred to in paragraph (2) of this section as to whether the required percentage of the aggregate principal amount or number of shares outstanding of each class of securities affected by any proposed alteration or modification has assented to the making of such alteration or modification, any security which secures any evidence or evidences of indebtedness of the carrier or of any company controlling or controlled by the carrier shall be deemed to be outstanding unless the Commission in its discretion determines that the proposed alteration or modification does not materially affect the interests of the holder or holders of the evidence or evidences of indebtedness secured by such security. Whenever any such pledged security is, for said purposes, to be deemed outstanding, assent in respect of such security, as to any proposed alteration or modification, may be given only (any express or implied provision in any mortgage, indenture, deed of trust, note, or other instrument to the contrary notwithstanding) as follows: (a) Where such security is pledged as security under a mortgage, indenture, deed of trust, or other instrument, pursuant to which any evidences of indebtedness are issued and outstanding, by the holders of a majority in principal amount of such evidences of indebtedness, or (b) where such security secures an evidence or evidences of indebtedness not issued pursuant to such a mortgage, indenture, deed of trust, or other instrument, by the holder or holders of such evidence or evidences of indebtedness; and in any such case the Commission, in addition to the submission referred to in paragraph (2) of this section, shall cause the carrier in such manner as it shall direct to submit the proposed alteration or modification (with such terms, conditions, and amendments, if any, as the Commission shall have determined to be just and reasonable) for acceptance or rejection, to the holders of the evidences of indebtedness issued and outstanding pursuant to such mortgage, indenture, deed of trust, or other instrument, or to the holder or holders of such evidence or evidences of indebtedness not so issued, and such proposed alteration or modification need not be submitted to the trustee of any such mortgage, indenture, deed of trust, or other instrument, but assent in respect of any such security shall be determined as hereinbefore in this section provided. For the purposes of this section a security (other than a security entitled to vote for the election of directors of the carrier) or an evidence of indebtedness shall not be deemed to be outstanding if, in the determination of the Commission, the assent of the holder thereof to any proposed alteration or modification is within the control of the carrier or of any person or persons controlling the carrier. The Commission shall, for the purposes of this section, divide the securities to be affected by any proposed alteration or modification into such classes as it shall determine to be just and reasonable.

(4) Modification of securities of carrier acting as guarantor, endorser, surety, or otherwise; person deemed carrier

(a) Any authorization and approval hereunder of any alteration or modification of a provision of any class of securities of a carrier or of a provision of any instrument pursuant to which a class of securities has been issued, or by which it is secured, shall be deemed to constitute authorization and approval of a corresponding alteration or modification of the obligation of any other carrier which has assumed liability in respect of such class of securities as guarantor, endorser, surety, or otherwise: *Provided,* That such other carrier consents in writing to such alteration or modification of such class of securities in respect of which it has assumed liability or of the instrument pursuant to which such class of securities has been issued or by which it is secured and, such consent having been given, any such corresponding alteration or modification shall become effective, without other action, when the alteration or modification of such class of se-

curities or of such instrument shall become and be binding.

(b) Any person who is liable or obligated contingently or otherwise on any class or classes of securities issued by a carrier shall, with respect to such class or classes of securities, for the purposes of this section, be deemed a carrier.

(5) Authority of section as exclusive and plenary

The authority conferred by this section shall be exclusive and plenary and any carrier, in respect of any alteration or modification authorized and approved by the Commission hereunder, shall have full power to make any such alteration or modification and to take any actions incidental or appropriate thereto, and may make any such alteration or modification and take any such actions, and any such alteration or modification may be made without securing the approval of the Commission under any other section of this Act or other paragraph of this section, and without securing approval of any State authority, and any carrier and its officers and employees and any other persons, participating in the making of an alteration or modification approved and authorized under the provisions of this section or the taking of any such actions, shall be, and they are, relieved from the operation of all restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to make and carry into effect the alteration or modification so approved and authorized in accordance with the conditions and with the amendments, if any, imposed by the Commission. Any power granted by this section to any carrier shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State. The provisions of this section shall not affect in any way the negotiability of any security of any carrier or of the obligation of any carrier which has assumed liability in respect thereto.

(6) Reports to Commission from carrier

The Commission shall require periodical or special reports from each carrier which shall hereafter secure from the Commission approval and authorization of any alteration or modification under this section, which shall show, in such detail as the Commission may require, the action taken by the carrier in the making of such alteration or modification.

(7) Section as permissive

The provisions of this section are permissive and not mandatory and shall not require any carrier to obtain authorization and approval of the Commission hereunder for the making of any alteration or modification of any provision of any of its securities or of any class thereof or of any provision of any mortgage, indenture, deed of trust, corporate charter, or other instrument, which it may be able lawfully to make in any other manner, whether by reason of provisions for the making of such alteration or modification in any such mortgage, indenture, deed of trust, corporate charter, or other instrument, or otherwise: *Provided*, That the provisions of paragraph (2) of section 20a of this Appendix, if applicable to such alteration or modification made otherwise than pursuant to the provisions of this section, shall continue to be so applicable.

(8) Law governing applications; supplemental orders

The provisions of paragraph (6) of section 20a of this Appendix, except the provisions of paragraph (6) of said section in respect of hearings, shall apply to applications made under this section. In connection with any order entered by the Commission pursuant to paragraph (2) of this section, the Commission may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any such order, subject always to the requirements of paragraph (2) of this section.

(9) Solicitation of proxies

The provisions of subsection (a) of section 78n of title 15 shall not apply to any solicitation in connection with a proposed alteration or modification pursuant to this section.

(10) Rules and regulations

The Commission shall have the power to make such rules and regulations appropriate to its administration of the provisions of this section as it shall deem necessary or desirable.

(11) Issuance of securities; law governing

Any issuance of securities under this section which shall be found by the Commission to comply with the requirements of paragraph (2) of section 20a of this Appendix shall be deemed to be an issuance which is subject to the provisions of section 20a of this Appendix within the meaning of section 3(a)(6) of the Securities Act of 1933, as amended [15 U.S.C. 77c(a)(6)]. Section 5 of said Securities Act [15 U.S.C. 77e] shall not apply to the issuance, sale, or exchange of certificates of deposit representing securities of, or claims against, any carrier which are issued by committees in proceedings under this section, and said certificates of deposit and transactions therein shall, for the purposes of said Securities Act [15 U.S.C. 77a et seq.] be deemed to be added to those exempted by sections 3 and 4, respectively, of said Securities Act [15 U.S.C. 77c, 77d].

(12) Taxes on issuance, transfer, or exchange of securities

The provisions of sections 1801, 1802, 3481, and 3482 of the Internal Revenue Code [of 1939] and any amendments thereto, unless specifically providing to the contrary, shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any alteration or modification effected pursuant to this section.

(13) Conditions permitting modification and adjustment procedure to carriers in receivership or reorganization proceedings

The Commission shall not approve an application filed under this section by any carrier while in equity receivership or in process of reorganization under section 77 of the Bankruptcy Act, except that the Commission may approve an application filed by a carrier which, on April 9, 1948, is in equity receivership and with respect to which no order confirming the sale of the carrier's property has been entered, or is in process of reorganization under section 77 and with respect to which no order confirming a plan shall have been entered, or, such an order having been entered, if an appeal from said order is pending on said date in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such appeal or to file such petition has not expired, if prior to the filing of such application with the Commission such carrier shall have applied for and been granted permission to file such application by the district judge before whom the equity receivership or section 205 of title 11 proceeding is pending. Any such carrier applying for permission to file such application shall file with the court as a prerequisite to the granting of such permission (1) a copy of the proposed application, (2) a copy of the proposed plan of alteration or modification of its securities, and (3) assurances satisfactory to the court of the acceptance of such plan from holders of at least 25 per centum of the aggregate amount of all securities, including not less than 25 per centum of the aggregate amount of all creditors' claims, affected by such plan. An order of a district judge granting or withholding such permission shall be final and shall not be subject to review. Upon granting of such permission, such proceeding, so far as it relates to a plan of reorganization, shall be suspended until the Commission shall have notified the court

that (a) the application filed by such carrier under this section has been dismissed or denied by the Commission or withdrawn, (b) the Commission has approved and authorized an alteration or modification under this section with respect to the securities of such carrier, or (c) twelve months have elapsed since the filing of such application and no such alteration or modification has been approved and authorized by the Commission. Upon receipt by the court of notification that such application has been dismissed or denied or withdrawn or that twelve months have elapsed and no alteration or modification has been approved and authorized, the equity receivership or section 77 proceeding shall be resumed as though permission to file application under this section had not been granted. Upon receipt by the court of notification that the Commission has authorized and approved such alteration or modification of the carrier's securities under this section as, in the judgment of the court, makes further receivership or section 77 proceeding unnecessary, the court shall enter an order restoring custody of the property to the debtor, and making such other provision as may be necessary to terminate the equity receivership or section 77 proceeding.

(Feb. 4, 1887, ch. 104, pt. I, § 20b, as added Apr. 9, 1948, ch. 180, § 2, 62 Stat. 163, and amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 16, 1957, Pub. L. 85-150, §§ 1, 2, 71 Stat. 369.)

§ 20c. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470; Pub. L. 96–258, § 3(b), June 3, 1980, 94 Stat. 427

Section repealed subject to an exception related to transportation of oil by pipeline. Section 337(a) of Pub. L. 95-598, which amended this section effective Oct. 1, 1979, subsequent to the repeal of this section by Pub. L. 95-473, was repealed by Pub. L. 96-258, effective June 3, 1980, as provided by section 3(e) of Pub. L. 96-258. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 20c. Recordation of railroad equipment trust agreements and other evidences of equipment indebtedness

Any mortgage, lease, equipment trust agreement, conditional sale agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of railroad cars, locomotives, or other rolling stock, used or intended for use in connection with interstate commerce, or any assignment of rights or interest under any such instrument, or any supplement or amendment to any such instrument or assignment (including any release, discharge or satisfaction thereof, in whole or in part), may be filed with the Commission, provided such instrument, assignment, supplement or amendment is in writing, executed by the parties thereto, and acknowledged or verified in accordance with such requirements as the Commission shall prescribe; and any such instrument or other document, when so filed with the Commission, shall constitute notice to and shall be valid and enforceable against all persons including, without limitation, any purchaser from, or mortgagee, creditor, receiver, or trustee in a case under title 11 bankruptcy of, the mortgagor, buyer, lessee or bailee of the equipment covered thereby, from and after the time such instrument or other document is so filed with the Commission; and such instrument or other document need not be otherwise filed, deposited, registered or recorded under the provisions of any other law of the United States of America, or of any State (or political subdivision thereof), territory, district or possession thereof, respecting the filing, deposit, registration or recordation of such instruments or documents. The Commission shall establish and maintain a system for the recordation of each such instrument or document, filed pursuant to the provisions of this section, and shall cause to be marked or stamped thereon, a consecutive number, as well as the date and hour of such recordation, and shall maintain, open to public inspection, an index of all such instruments or documents, including any assignment, amendment, release, discharge or satisfaction thereof, and shall record, in such index the names and addresses of the principal debtors, trustees, guarantors and other parties thereto, as well as such other facts as may be necessary to facilitate the determination of the rights of the parties to such transactions.

(Feb. 4, 1887, ch. 104, pt. I, § 20c, as added July 16, 1952, ch. 881, 66 Stat. 724, and amended Nov. 6, 1978, Pub. L. 95-598, title III, § 337(a), 92 Stat. 2680.)

§ 21. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 21. Annual reports of Commission

The Commission shall, on or before the 3d day of April of each year, make a report which shall be transmitted to Congress and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

(Feb. 4, 1887, ch. 104, pt. I, § 21, 24 Stat. 387; Mar. 2, 1889, ch. 382, § 8, 25 Stat. 862; May 23, 1935, ch. 136, 49 Stat. 287; Apr. 21, 1976, Pub. L. 94-273, § 11(4), 90 Stat. 378.)

§ 22. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 22. Restrictions; quotations of rates for United States Government

(1) Nothing in this chapter shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this chapter shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of Veterans' Administration facilities or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this chapter shall be construed to prohibit any common carrier from establishing by

publication and filing in the manner prescribed in section 6 of this Appendix reduced fares for application to the transportation of (a) personnel of United States armed services or of foreign armed services, when such persons are traveling at their own expense, in uniform of those services, and while on official leave, furlough, or pass; or (b) persons discharged, retired, or released from United States armed services within thirty days prior to the commencement of such transportation and traveling at their own expense to their homes or other prospective places of abode; nothing in this chapter shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the free carriage, storage, or handling by a carrier of the household goods and other personal effects of its own officers or employees when such goods and effects must necessarily be moved from one place to another as a result of a change in the place of employment of such officers or employees while in the service of the carrier, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies; nothing in this chapter shall be construed to prohibit any common carrier from carrying any totally blind person accompanied by a guide or seeing-eye dog or other guide dog specially trained and educated for that purpose or from carrying a disabled person accompanied by an attendant if such person is disabled to the extent of requiring such attendant, at the usual and ordinary fare charged to one person, under such reasonable regulations as may have been established by the carrier: *Provided,* That no pending litigation shall in any way be affected by this chapter: *Provided further,* That nothing in this chapter shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this chapter, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section 6 of this Appendix; and all the provisions of said section relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section 10 of this Appendix shall apply to any violation of the requirements of this proviso. Nothing in this chapter shall prevent any carrier or carriers subject to this chapter from giving reduced rates for the transportation of property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster, if such reduced rates have first been authorized by order of the Commission (with or without a hearing); but in any such order the Commission shall (1) define such section, (2) specify the period during which such reduced rates are to remain in effect, and (3) clearly define the class or classes of persons entitled to such reduced rates: *Provided,* That any such order may define the class or classes entitled to such reduced rates as being persons designated as being in distress and in need of relief by agents of the United States or any State authorized to assist in relieving the distress caused by any such calamitous visitation or disaster. No carrier subject to the provisions of this chapter shall be deemed to have violated the provisions of such chapter with respect to undue or unreasonable preference or unjust discrimination by reason of the fact that such carrier extends such reduced rates only to the class or classes of persons defined in the order of the Commission authorizing such reduced rates.

(2) All quotations or tenders of rates, fares or charges under paragraph (1) of this section for the transportation, storage, or handling of property or the transportation of persons free or at reduced rates for the United States Government, or any agency or department thereof, including quotations or tenders for retroactive application whether negotiated or renegotiated after the services have been performed, shall be in writing or confirmed in writing and a copy or copies thereof shall be submitted to the Commission by the carrier or carriers offering such tenders or quotations in the manner specified by the Commission and only upon the submittal of such a quotation or tender made pursuant to an agreement approved by the Commission under section 5b or section 5c of this Appendix shall the provisions of paragraph (9) of such section 5b or paragraph (8) of such section 5c apply, but said provisions shall continue to apply as to any agreement so approved by the Commission under which any such quotation or tender (a) was made prior to August 31, 1957 or (b) is on or after August 31, 1957 made and for security reasons, as hereinafter provided, is not submitted to the Commission: *Provided,* That nothing in this paragraph shall affect any liability or cause of action which may have accrued prior to August 31, 1957. Submittal of such quotations or tenders to the Commission shall be made concurrently with submittal to the United States Government, or any agency or department thereof, for whose account the quotations or tenders are offered or for whom the proposed services are to be rendered. Such quotations or tenders shall be preserved by the Commission for public inspection. The provisions of this paragraph requiring submissions to the Commission shall not apply to any quotation or tender which, as indicated by the United States Government, or any agency or department thereof, to any carrier or carriers, involves information the disclosure of which would endanger the national security.

(Feb. 4, 1887, ch. 104, pt. I, § 22, 24 Stat. 387; Mar. 2, 1889, ch. 382, § 9, 25 Stat. 862; Feb. 8, 1895, ch. 61, 28 Stat. 643; Aug. 18, 1922, ch. 280, 42 Stat. 827; Feb. 26, 1927, ch. 217, 44 Stat. 1247; Mar. 4, 1927, ch. 510, § 1, 44 Stat. 1446; June 27, 1934, ch. 847, title V, § 511, 48 Stat. 1264; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; July 5, 1937, ch. 432, 50 Stat. 475; Aug. 25, 1937, ch. 776, 50 Stat. 809; Sept. 18, 1940, ch. 722, title I, § 3(c)-(e), 54 Stat. 900; Sept. 27, 1944, ch. 423, 58 Stat. 751; July 27, 1956, ch. 759, 70 Stat. 702; Aug. 31, 1957, Pub. L. 85-246, 71 Stat. 564; Sept. 2, 1958, Pub. L. 85-857, § 13(a), 72 Stat. 1264; Oct. 19, 1976, Pub. L. 94-555, title II, § 220(n), 90 Stat. 2630.)

§ 23. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 23. Mandamus to obtain equal facilities for shippers

The district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided,* That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided,* That the remedy given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

(Feb. 4, 1887, ch. 104, pt. I, § 23, formerly Mar. 2, 1889, ch. 382, § 10, 25 Stat. 862; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, renumbered May 16, 1942, ch. 318, § 5, 56 Stat. 301.)

§ 25. Repealed. Sept. 18, 1940, ch. 722, title I, § 14(a), 54 Stat. 919

Section, act Feb. 4, 1887, ch. 104, pt. I, § 25, as added by act Feb. 28, 1920, ch. 91, § 441, 41 Stat. 497, and amended Apr. 16, 1936, ch. 229, § 10, 49 Stat. 1212, related to schedules and rates of water carriers in foreign commerce. See section 901 et seq. of this Appendix.

§ 26. Safety appliances, methods, and systems

(a) "Railroad" defined

The term "railroad" as used in this section shall have the same meaning as when used in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.).

(b) Order to install systems, etc.; modification; negligence of railroad

The Secretary of Transportation may, after investigation, if found necessary in the public interest, order any railroad within a time specified in the order, to install the block signal system, interlocking, automatic train stop, train control, and/or cab-signal devices, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation, which comply with specifications and requirements prescribed by the Secretary of Transportation, upon the whole or any part of its railroad such order to be issued and published a reasonable time (as determined by the Secretary of Transportation) in advance of the date for its fulfillment: *Provided,* That block signal systems, interlocking, automatic train stop, train control, and cab-signal devices in use on August 26, 1937, or such systems or devices hereinafter installed may not be discontinued or materially modified by railroads without the approval of the Secretary of Transportation: *Provided further,* That a railroad shall not be held to be negligent because of its failure to install such systems, devices, appliances, or methods upon a portion of its railroad not included in the order, and any action arising because of an accident occurring upon such portion of its railroad shall be determined without consideration of the use of such systems, devices, appliances, or methods upon another portion of its railroad.

(c) Filing report on rules, standards, and instructions; time; modification

Each railroad shall file with the Secretary of Transportation its rules, standards, and instructions for the installation, inspection, maintenance, and repair of the systems, devices, and appliances covered by this section within six months after August 26, 1937, and, after approval by the Secretary of Transportation, such rules, standards, and instructions, with such modifications as the Secretary of Transportation may require, shall become obligatory upon the railroad: *Provided, however,* That if any such railroad shall fail to file its rules, standards, and instructions the Secretary of Transportation shall prepare rules, standards, and instructions for the installation, inspection, maintenance, and repair of such systems, devices, and appliances to be observed by such railroad, which rules, standards, and instructions, a copy thereof having been served on the president, chief operating officer, trustee, or receiver, of such railroad, shall be obligatory: *Provided further,* That such railroad may from time to time change the rules, standards, and instructions herein provided for, but such change shall not take effect and the new rules, standards, and instructions be enforced until they shall have been filed with and approved by the Secretary of Transportation: *And provided further,* That the Secretary of Transportation may on his own motion, upon good cause shown, revise, amend, or modify the rules, standards, and instructions prescribed by him under this subsection, and as revised, amended, or modified they shall be obligatory upon the railroad after a copy thereof shall have been served as above provided.

(d) Inspection by Secretary of Transportation; personnel

The Secretary of Transportation is authorized to inspect and test any systems, devices, and appliances referred to in this section used by any such railroad and to determine whether such systems, devices, and appliances are in proper condition to operate and provide adequate safety. For these purposes the Secretary of Transportation is authorized to employ persons familiar with the subject. Such persons shall be in the classified service and shall be appointed after competitive examination according to the law and the rules of the Director of the Office of Personnel Management governing the classified service. No person interested, either directly or indirectly, in any patented article required to be used on or in connection with any of such systems, devices, and appliances or who has any financial interest in any railroad or in any concern dealing in railway supplies shall be used for such purpose.

(e) Unlawful use of system, etc.

It shall be unlawful for any railroad to use or permit to be used on its line any system, device, or appliance covered by this section unless such apparatus, with its controlling and operating appurtenances, is in proper condition and safe to operate in the service to which it is put, so that the same may be used without unnecessary peril to life and limb, and unless such apparatus, with its controlling and operating appurtenances, has been inspected from time to time in accordance with the provisions of this section and is able to meet the requirements of such test or tests as may be prescribed in the rules and regulations provided for in this section.

(f) Report of failure of system, etc., and accidents

Each railroad shall report to the Secretary of Transportation in such manner and to such extent as may be required by the Secretary of Transportation, failures of such systems, devices, or appliances to indicate or function as intended; and in case of accident resulting from failure of any such system, device, or appliance to indicate or function as intended, and resulting in injury to person or property which is reportable under the rules of the Secretary of Transportation, a statement forthwith must be made in writing of the fact of such accident by the railroad owning or maintaining such system, device, or appliance to the Secretary of Transportation; whereupon the facts concerning such accident shall be subject to investigation as provided in sections 40 to 42 of title 45.

(g) Repealed. Pub. L. 97–449, § 7(b), Jan. 12, 1983, 96 Stat. 2444

(h) Penalties; enforcement

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) violating any provision of this section, or failing to comply with any of the rules, regulations, orders, standards, or instructions made, prescribed, or approved hereunder shall be liable to a penalty in such amount, not less than $250 nor more than $10,000 per violation (with each day of a violation constituting a separate violation), or where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, not to exceed $20,000, as the Secretary of Transportation deems reasonable, except that a penalty may be assessed against an individual only for a willful violation. Such penalty shall be assessed by the Secretary of Transportation and, where compromise is not reached by the Secretary under sections 3711 and 3716–3718 of title 31, recovered in a suit or suits to be brought by the United States attorney for the judicial district in which the violation occurred, in which the individual defendant resides, or in which the defendant has its principal executive office. It shall be the duty of such attorneys to bring such suits upon duly verified information being lodged with them showing such violations having occurred; and it shall be the duty of the Secretary of Transportation to lodge with the proper United States attorneys information of any violations of this section coming to its knowledge. For purposes of this section, an act by an individual that causes a railroad to be in violation of any of the provisions of this section, or to fail to comply with any of the rules, regulations, orders, standards, or instructions made, prescribed, or approved under this section, shall be deemed a violation, and an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor under protest communicated to the supervisor. Such individual shall have the right to document such protest.

(Feb. 4, 1887, ch. 104, pt. I, § 25, formerly § 26, as added Feb. 28, 1920, ch. 91, § 441, 41 Stat. 498, amended Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Aug. 26, 1937, ch. 818, 50 Stat. 835, renumbered Sept. 18, 1940, ch. 722, title I, § 14(b), 54 Stat. 919, and amended Pub. L. 94–348, § 3(d), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95–574, § 7(d), 92 Stat. 2461; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Oct. 10, 1980, Pub. L. 96–423, § 8(d), 94 Stat. 1814; Jan. 12, 1983, Pub. L. 97–449, § 7(b), 96 Stat. 2444; June 22, 1988, Pub. L. 100–342, § 17, 102 Stat. 635.)

REFERENCES IN TEXT

The Federal Railroad Safety Act of 1970, referred to in subsec. (a), is title II of Pub. L. 91–458, Oct. 16, 1970, 84 Stat. 971, as amended, which is classified generally to subchapter II (§ 431 et seq.) of chapter 13 of Title 45, Railroads. For complete classification of this Act to the Code, see Short Title note set out under section 421 of Title 45 and Tables.

CODIFICATION

In subsec. (h), "sections 3711 and 3716–3718 of title 31" was substituted for "the Federal Claims Collection Act of 1966" on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance, and Pub. L. 97–452, § 3(b), Jan. 12, 1983, 96 Stat. 2479.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–342, § 17(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The term 'carrier' as used in this section includes any carrier by railroad subject to this chapter (including any terminal or station company), and any receiver or any other individual or body, judicial or otherwise, when in the possession of the business of a carrier subject to this section: *Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway unless such railway is operated as a part of a general steam-railroad system of transportation, but shall not exclude any part of a general steam-railroad system of transportation now or hereafter operated by any other motive power."

Subsec. (b). Pub. L. 100–342, § 17(2), (8), substituted "Secretary of Transportation" for "Commission" in 4 places and substituted "order any railroad" for "order any carrier", "modified by railroads" for "modified by carriers", and "That a railroad" for "That a carrier".

Subsec. (c). Pub. L. 100–342, § 17(3), (8), substituted "Each railroad" for "Each carrier by railroad", substituted "Secretary of Transportation" for "Commission" in 6 places, and substituted "railroad" for "carrier" in 6 places.

Subsec. (d). Pub. L. 100–342, § 17(4), (8), substituted "Secretary of Transportation" for "Commission" in 2

places and substituted "railroad" for "carrier" in 2 places.

Subsec. (e). Pub. L. 100-342, § 17(5), substituted "railroad" for "carrier".

Subsec. (f). Pub. L. 100-342, § 17(6), (8), substituted "Secretary of Transportation" for "Commission" in 4 places and substituted "railroad" for "carrier" in 2 places.

Subsec. (h). Pub. L. 100-342, § 17(7), (8), substituted new first sentence for former first sentence which read as follows: "Any carrier which violates any provision of this section, or which fails to comply with any of the orders, rules, regulations, standards, or instructions made, prescribed, or approved hereunder shall be liable to a penalty of not less than $250 and not more than $2,500 for each such violation and not less than $250 and not more than $2,500 for each and every day such violation, refusal, or neglect continues, to be assessed by the Secretary of Transportation and recovered in a suit or suits to be brought by the United States attorney in the district court of the United States for the judicial district in which such violation occurred or in which the defendant has its principal executive office.", substituted "duty of the Secretary of Transportation" for "duty of the Commission", and inserted at end "For purposes of this section, an act by an individual that causes a railroad to be in violation of any of the provisions of this section, or to fail to comply with any of the rules, regulations, orders, standards, or instructions made, prescribed, or approved under this section, shall be deemed a violation, and an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor under protest communicated to the supervisor. Such individual shall have the right to document such protest."

1983—Subsec. (g). Pub. L. 97-449 struck out subsec. (g) which provided that the Secretary of Transportation had the duty to see that the requirements of this section were observed by carriers. See section 501(b) of Title 49, Transportation.

1980—Subsec. (h). Pub. L. 96-423 substituted "for the judicial district in which such violation occurred or in which the defendant has its principal executive office" for "having jurisdiction in the locality where such violation shall have been committed".

1978—Subsec. (h). Pub. L. 95-574 provided that penalties under this section be assessed by the Secretary of Transportation.

1976—Subsec. (h). Pub. L. 94-348 substituted "not less than $250 and not more than $2,500 for each violation and not less than $250 and not more than $2,500" for "$100 for each such violation and $100".

1937—Act Aug. 26, 1937, divided section into subsections and amended section generally.

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out a note under section 431 of Title 45, Railroads.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" in subsec. (d) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

RAILROAD SAFETY VIOLATIONS; MINIMUM AMOUNTS FOR COMPROMISED PENALTIES

Penalties assessed under this section not to be compromised by the Secretary for less than $250, see section 3711 of Title 31, Money and Finance.

CROSS REFERENCES

Civil-service laws, generally, see Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this Appendix; title 31 section 3711; title 45 section 715.

§ 26a. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 26a. State or subdivision income tax withholding on compensation paid to interstate railroad, express company, or sleeping car company employees

(a) Withholding where employee earns more than 50 per centum of compensation paid by carrier to him or where employee resides; filing of information return by carrier

No part of the compensation paid by any railroad, express company, or sleeping car company, subject to the provisions of this chapter, to an employee (1) who performs his regularly assigned duties as such an employee on a locomotive, car, or other trackborne vehicle in more than one State, or (2) who is engaged principally in maintaining roadways, signals, communications, and structures or in operating motortrucks out of railroad terminals in more than one State, shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned: *Provided, however,* That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or any subdivision thereof during the preceding calendar year, then withholding shall be required only for the State or subdivision of the employee's residence, as shown on the employment records of any such carrier; nor shall any such carrier file any information return or other report for income tax purposes with respect to such compensation with any State or subdivision thereof other than such State or subdivision of residence and the State or subdivision for which the withholding of such tax has been required under this subsection.

(b) State or subdivision where employee deemed to have earned more than 50 per centum of compensation

(1) For the purposes of subsection (a)(1) of this section, an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision thereof in which the mileage traveled by him in such State or subdivision is more than 50 per centum of the total mileage traveled by him in the calendar year while so employed.

(2) For the purposes of subsection (a)(2) of this section, an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision thereof in which the time worked by him in such State or subdivision is more than 50 per centum of the total time worked by him in the calendar year while so employed.

(c) "State" and "compensation" defined

For the purposes of this section the term "State" also means the District of Columbia; and the term

"compensation" shall mean all moneys received for services rendered by an employee, as defined in subsection (a) of this section, in the performance of his duties and shall include wages and salary.

(Feb. 4, 1887, ch. 104, pt. I, § 26, as added Dec. 23, 1970, Pub. L. 91-569, § 1, 84 Stat. 1499.)

§ 26b. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470; Pub. L. 96-258, § 3(b), June 3, 1980, 94 Stat. 427

Section repealed subject to an exception related to transportation of oil by pipeline. Section 804 of Pub. L. 95-620, which amended par. (4) of this section, effective 180 days after Nov. 9, 1978, subsequent to the repeal of this section by Pub. L. 95-473, was repealed by Pub. L. 96-258. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 26b. Office of Rail Public Counsel

(1) Establishment; statutory provisions applicable

There shall be established, within 60 days after February 5, 1976, a new independent office affiliated with the Commission to be known as the Office of Rail Public Counsel. The Office of Rail Public Counsel shall function continuously pursuant to this section and other applicable Federal laws.

(2) Director; appointment; term of office; responsibilities; compensation

(a) The Office of Rail Public Counsel shall be administered by a Director. The Director shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The term of office of the Director shall be 4 years. He shall be responsible for the discharge of the functions and duties of the Office of Rail Public Counsel. He shall be appointed and compensated, without regard to the provisions of title 5 governing appointments in the competitive service, classification, and General Schedule pay rates, at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title.

(3) Powers and duties of Director

The Director is authorized to appoint, fix the compensation, and assign the duties of employees of such Office and to procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5. Each bureau, office, or other entity of the Commission and each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized to provide the Office of Rail Public Counsel with such information and data as it requests. The Director is authorized to enter into, without regard to section 5 of title 41, such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of his functions and duties. The Director shall submit a monthly report on the activities of the Office of Rail Public Counsel to the Chairman of the Commission, and the Commission, in its annual report to the Congress, shall evaluate and make recommendations with respect to such Office and its activities, accomplishments, and shortcomings.

(4) Additional duties and responsibilities of Office

In addition to any other duties and responsibilities prescribed by law, the Office of Rail Public Counsel—

(a) shall have standing to become a party to any proceeding, formal or informal, which is pending or initiated before the Commission and which involves a common carrier by railroad subject to this chapter;

(b) may petition the Commission for the initiation of proceedings on any matter within the jurisdiction of the Commission which involves a common carrier by railroad subject to this chapter;

(c) may seek judicial review of any Commission action on any matter involving a common carrier by railroad subject to this chapter, to the extent such review is authorized by law for any person and on the same basis;

(d) shall solicit, study, evaluate, and present before the Commission, in any proceeding, formal or informal, the views of those communities and users of rail service affected by proceedings initiated by or pending before the Commission, whenever the Director determines, for whatever reason (such as size or location), that such community or user of rail service might not otherwise be adequately represented before the Commission in the course of such proceedings;

(e) shall evaluate and represent, before the Commission and before other Federal agencies when their policies and activities significantly affect rail transportation matters subject to the jurisdiction of the Commission, and shall by other means assist the constructive representation of, the public interest in safe, efficient, reliable, and economical rail transportation services[;] and

(f) shall present the views of users, as well as the views of the general public and affected communities, and, where appropriate, providers of rail services in proceedings of Federal agencies concerning—

(1) the impact of energy proposals and actions on rail transportation, and

(2) whether transportation policies are consistent with National energy policies.

In the performance of its duties under this paragraph, the Office of Rail Public Counsel shall assist the Commission in the development of a public interest record in proceedings before the Commission.

(5) Concurrent submission of budget requests and estimates to President and Congress

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

(6) Authorization of appropriations

There are authorized to be appropriated to the Office of Rail Public Counsel for the purpose of carrying out the provisions of this section not to exceed $500,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal year transition period ending September 30, 1976, and not to exceed $2,000,000 for the fiscal year ending September 30, 1977.

(Feb. 4, 1887, ch. 104, pt. I, § 27, as added Feb. 5, 1976, Pub. L. 94-210, title III, § 304(a), 90 Stat. 51, and amended Nov. 9, 1978, Pub. L. 95-620, title VIII, § 804, 92 Stat. 3348.)

§ 26c. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 26c. Discriminatory taxation by States, political subdivisions, or governmental entities or persons acting on behalf of States or subdivisions

(1) Particular acts unlawful

Notwithstanding the provisions of section 302(b) of this Appendix, any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

(b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).

(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this chapter.

(2) Judicial relief; limitations

Notwithstanding any provision of section 1341 of title 28, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

(b) the provisions of this section shall not become effective until 3 years after February 5, 1976;

(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property, and the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.

(3) Definitions

As used in this section, the term—

(a) "assessment" means valuation for purposes of a property tax levied by any taxing district;

(b) "assessment jurisdiction" means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes of determining the assessed value of property for ad valorem taxation;

(c) "commercial and industrial property" or "all other commercial and industrial property" means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

(d) "transportation property" means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this chapter or which is owned by the National Railroad Passenger Corporation.

(Feb. 4, 1887, ch. 104, pt. I, § 28, as added Feb. 5, 1976, Pub. L. 94-210, title IV, § 306, 90 Stat. 54, and amended Oct. 19, 1976, Pub. L. 94-555, title II, § 220(o), 90 Stat. 2630.)

§ 27. Repealed. Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466

Section, acts Feb. 4, 1887, ch. 104, pt. I, § 29, as added Feb. 28, 1920, ch. 91, § 441, 41 Stat. 499, amended Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543, renumbered § 26 and amended Sept. 18, 1940, ch. 722, title I, § 14(c), 54 Stat. 919, renumbered § 27, Dec. 23, 1970, Pub. L. 91-569, § 1, 84 Stat. 1499, renumbered § 29, Feb. 5, 1976, Pub. L. 94-210, title III, § 304(a), 90 Stat. 51, authorized chapter to be cited as part I of the Interstate Commerce Act. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49.

CHAPTER 2—LEGISLATION SUPPLEMENTARY TO "INTERSTATE COMMERCE ACT"

§ 41. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 41. Liability of corporation carriers and agents; offenses and penalties

(1) Liability of corporation common carriers; offenses; penalties; jurisdiction

Anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under sections 41, 42, or 43 of this Appendix, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by sections 41, 42, or 43 of this Appendix, with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than $1,000 nor more than $20,000 for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by

said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $1,000 nor more than $20,000: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of sections 41, 42, or 43 of this Appendix or of the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

(2) Liabilities for acts of agents; departure from published rates

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under sections 41, 42, or 43 of this Appendix, shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section.

(3) Receiving rebates; additional penalty and recovery thereof

Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of sections 41, 42, or 43 of this Appendix, or for whom as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in said sections, shall in addition to any penalty provided by said sections forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(Feb. 19, 1903, ch. 708, § 1, 32 Stat. 847; June 29, 1906, ch. 3591, § 2, 34 Stat. 587.)

§ 42. Repealed. Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466

Section, acts Feb. 19, 1903, ch. 708, § 2, 32 Stat. 848; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, authorized all parties to be included in any proceeding to enforce the laws relating to interstate commerce. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49.

§ 43. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 43. Proceedings in equity to enforce tariffs, etc.; United States attorneys; damages; witnesses; precedence

Whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the district court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several United States attorneys, whenever the Attorney General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by sections 41, 42, or 43 of this Appendix shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February 4, 1887, entitled An Act to regulate commerce and the Acts amendatory thereof. And in proceedings under sections 41, 42, or 43 of this Appendix and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction.

(Feb. 19, 1903, ch. 708, § 3, 32 Stat. 848; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1,

62 Stat. 909; Oct. 15, 1970, Pub. L. 91-452, title II, § 244, 84 Stat. 931; Dec. 21, 1974, Pub. L. 93-528, § 6(b), 88 Stat. 1709.)

§§ 44, 45. Transferred

CODIFICATION

Section 44, acts Feb. 11, 1903, ch. 544, § 1, 32 Stat. 823; June 25, 1910, ch. 428, 36 Stat. 854; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Apr. 6, 1942, ch. 210, § 1, 56 Stat. 198; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 21, 1974, Pub. L. 93-528, § 4, 88 Stat. 1708, which related to expedition of actions by United States involving general public importance, was transferred to section 28 of Title 15, Commerce and Trade.

Section 45, acts Feb. 11, 1903, ch. 544, § 2, 32 Stat. 823; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272; June 25, 1948, ch. 646, § 17, 62 Stat. 989; Dec. 21, 1974, Pub. L. 93-528, § 5, 88 Stat. 1709, which related to appeals to Supreme Court, was transferred to section 29 of Title 15.

§ 46. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 46. Neglect or refusal to attend and testify, or to answer lawful inquiries, or to produce books, etc.; offense; punishment

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than $100 nor more than $5,000, or by imprisonment for not more than one year or by both such fine and imprisonment.

(Feb. 11, 1893, ch. 83, 27 Stat. 443; Oct. 15, 1970, Pub. L. 91-452, title II, § 245, 84 Stat. 931.)

§§ 47, 48. Repealed. Pub. L. 91-452, title II, §§ 209, 210, Oct. 15, 1970, 84 Stat. 929

Section 47, act Feb. 25, 1903, ch. 755, § 1, 32 Stat. 904, granted immunity from prosecution to witnesses testifying or producing evidence, documentary or otherwise, in any proceeding, suit, or prosecution under chapters 1, 8, 12, 13, and 19 of this Appendix. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Section 48, act June 30, 1906, ch. 3920, 34 Stat. 798, provided that, under the immunity provisions of sections 43, 46, and 47 of this Appendix, immunity was to extend only to a natural person who, in obedience to a subpoena, testified or produced evidence.

EFFECTIVE DATE OF REPEAL

Repeal of sections 47 and 48 effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Repeal of sections 47 and 48 not to affect any immunity to which any individual was entitled by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

§ 49. Transferred

CODIFICATION

Section, acts Feb. 4, 1887, ch. 104, pt. I, § 23, formerly Mar. 2, 1889, ch. 382, § 10, 25 Stat. 862; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, renumbered May 16, 1942, ch. 318, § 5, 56 Stat. 301, which related to mandamus to obtain equal facilities for shippers, was transferred to section 23 of this Appendix pursuant to renumbering by act May 16, 1942.

§ 50. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 50. Agent in Washington for service; service in default of designation

It shall be the duty of every common carrier subject to the provisions of chapter 1 of this Appendix to designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for and on behalf of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or before the district court, and to file such designation in the office of the secretary of the Interstate Commerce Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personally upon such common carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Interstate Commerce Commission or district court may be made by posting such notice or process in the office of the secretary of the Interstate Commerce Commission.

(June 18, 1910, ch. 309, § 6, 36 Stat. 544; Oct. 22, 1913, ch. 32, 38 Stat. 219.)

§ 51. Repealed. Pub. L. 95-473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 51. Proceedings relating to rail and water routes; orders

The orders of the Interstate Commerce Commission relating to paragraphs (15) to (17) of section 5 of this Appendix and paragraph (11) of section 6 of this Appendix shall only be made upon formal complaint or in proceedings instituted by the Commission of its own motion and after full hearing. The orders provided for in said paragraphs shall be served in the same manner and enforced by the same penalties and proceedings as are the orders of the Commission made under the provisions of section 15 of this Appendix, and they may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order.

(Aug. 24, 1912, ch. 390, § 11, 37 Stat. 568.)

§ 52. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 52. Railroads to serve employees in valuation work; compensation

It shall be the duty of every common carrier by railroad whose property is being valued under section 19a of this Appendix to transport the engineers, field parties, and other employees of the United States who are actually engaged in making surveys and other examination of the physical property of said carrier necessary to execute said section from point to point on said railroad as may be reasonably required by them in the actual discharge of their duties; and, also, to move from point to point and store at such points as may be reasonably required the cars of the United States which are being used to house and maintain said employees; and, also, to carry the supplies necessary to maintain said employees and the other property of the United States actually used on said railroad in said work of valuation. The service above required shall be regarded as a special service and shall be rendered under such forms and regulations and for such reasonable compensation as may be prescribed by the Interstate Commerce Commission and as will insure an accurate record and account of the service rendered by the railroad, and such evidence of transportation, bills of lading, and so forth, shall be furnished to the Commission as may from time to time be required by the Commission.

(Aug. 1, 1914, ch. 223, § 1, 38 Stat. 627.)

§ 53. Omitted

CODIFICATION

Section, act Feb. 17, 1917, ch. 84, 39 Stat. 922, prohibited the Commission or the courts from construing the Interstate Commerce Act as prohibiting the lessee of the Cincinnati Southern Railway from furnishing certain free transportation, and was omitted as being of limited interest.

§ 54. Repealed. May 29, 1928, ch. 901, § 1(114), 45 Stat. 994

Section, act Mar. 4, 1915, ch. 147, § 1, 38 Stat. 1140, related to statements showing employments under appropriations.

§ 55. Repealed. Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466

Section, act Jan. 30, 1925, ch. 120, 43 Stat. 801, set forth policy for rate adjustments, and authorized investigations of rates. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49.

§ 56. Repealed. May 29, 1928, ch. 901, § 1(113), 45 Stat. 994

Section, act Oct. 2, 1888, ch. 1069, 25 Stat. 530, related to inclusion of statement of expenditures of Commission in annual report to Congress.

§ 57. Repealed. Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466

Section, acts Mar. 2, 1889, ch. 411, § 1, 25 Stat. 954; June 10, 1921, ch. 18, § 304, 42 Stat. 24, related to auditing of expenses of the Interstate Commerce Commission. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49.

§ 58. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(27), 63 Stat. 401, renumbered Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583

Section, act Aug. 1, 1914, ch. 223, § 1, 38 Stat. 627, related to exchange of typewriters, adding machines, and other devices. See section 471 et seq. of Title 40, Public Buildings, Property, and Works.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1949, see section 505 of act June 30, 1949.

§§ 59, 60. Repealed. Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466

Section 59, act June 19, 1934, ch. 648, title II, § 1, 48 Stat. 1056, related to drought emergency existing in June 1934.

Section 60, act Jan. 19, 1929, ch. 79, §§ 1, 2, 45 Stat. 1084, authorized prison made goods to be divested of interstate character.

For disposition of these sections in revised Title 49, Transportation, see Table at beginning of Title 49.

§§ 61 to 64. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 61, act July 24, 1935, ch. 412, § 1, 49 Stat. 494, related to transportation or importation of convict made goods. See section 1761 of Title 18, Crimes and Criminal Procedure.

Section 62, act July 24, 1935, ch. 412, § 2, 49 Stat. 494, related to marking packages. See section 1762 of Title 18.

Section 63, act July 24, 1935, ch. 412, § 3, 49 Stat. 495, related to penalties for violations. See section 1762 of Title 18.

Section 64, act July 24, 1935, ch. 412, § 4, 49 Stat. 495, related to jurisdiction of violations.

EFFECTIVE DATE OF REPEAL

Repeal of sections 61 to 64 effective Sept. 1, 1948, see section 38 of act June 25, 1948, set out as an Effective Date note preceding section 1 of Title 28, Judiciary and Judicial Procedure.

§ 65. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 65. Government traffic; rates

(a) Notwithstanding any other provision of law, but subject to the provisions of sections 1(7) and 22 of the Interstate Commerce Act, as amended [49 App. U.S.C. 1(7) and 22], the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, and the rate determined by the Interstate Commerce Commission as reasonable therefor shall be paid for the transportation by railroad of the United States mail: *Provided, however,* That any carrier by railroad and the United States may enter into contracts for the transportation of the United States mail for less than such rate: *Provided further,* That section 5 of title 41, shall not after September 18, 1940, be construed as requiring advertising for bids in connection with the procurement of transportation services when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed.

(b) If any carrier by railroad furnishing such transportation, or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the railroad operated by it, the provisions of law with respect to compensation for such transportation shall continue to apply to such transportation as though subsection (a) of this section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid. Such release must be filed within one year from September 18, 1940. Nothing in this section shall be construed as requiring any such carrier to reconvey to the United States lands which have been heretofore patented or certified to it, or to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value or as preventing the issuance of patents to lands listed or selected by such carrier, which listing or selection has heretofore been fully and finally approved by the Secretary of the Interior to the extent that the issuance of such patents may be authorized by law.

(Sept. 18, 1940, ch. 722, title III, § 321, 54 Stat. 954; Dec. 12, 1945, ch. 573, § 1, 59 Stat. 606.)

§ 65a. Repealed. Pub. L. 95–473, § 4(b), (c), Oct. 17, 1978, 92 Stat. 1466, 1470

Section repealed subject to an exception related to transportation of oil by pipeline. For disposition of this section in revised Title 49, Transportation, see Table at beginning of Title 49. See, also, notes following Table.

Prior to repeal, section read as follows:

§ 65a. Readjustment of fares, rates, and charges to shippers

The Interstate Commerce Commission, in the exercise of its power to prescribe just and reasonable rates, fares, and charges, shall give due consideration to the increased revenues which carriers will receive as a result of the enactment of section 65 of this Appendix, so that such increased revenues will be reflected in appropriate readjustments in rates, fares, and charges to shippers.

(Dec. 12, 1945, ch. 573, § 3, 59 Stat. 607.)

§ 66. Transferred

CODIFICATION

Section, acts Sept. 18, 1940, ch. 722, title III, § 322, 54 Stat. 955; Aug 26, 1958, Pub. L. 85-762, § 2, 72 Stat. 860; Oct. 25, 1972, Pub. L. 92-550, § 1, 86 Stat. 1163; Jan. 2, 1975, Pub. L. 93-604, title III, § 201, 88 Stat. 1960, relating to the payment for transportation of persons or property for or on behalf of the United States by any carrier or forwarder, was transferred to section 244 of former Title 31, prior to its repeal by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1075, the first section of which enacted Title 31, Money and Finance. See section 3726 of Title 31.

PRIOR PROVISIONS

Provisions formerly classified to this section, act Sept. 18, 1940, ch. 722, title III, § 321, 54 Stat. 954, are classified to section 65 of this Appendix.

§ 67. Transferred

CODIFICATION

Section, act Sept. 18, 1940, ch. 722, title III, § 322, 54 Stat. 955, which related to payment for transportation of United States mail and persons or property on behalf of the United States, was transferred to section 66 of this Appendix.

CHAPTER 3—TERMINATION OF FEDERAL CONTROL

§§ 71 to 79. Repealed. Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466

Section 71, act Feb. 28, 1920, ch. 91, § 2, 41 Stat. 457, related to definitions.

Section 72, act Feb. 28, 1920, ch. 91, § 202, 41 Stat. 457, related to funds available.

Section 73, acts Feb. 28, 1920, ch. 91, § 204, 41 Stat. 460; Mar. 4, 1927, ch. 510, § 4, 44 Stat. 1450; Jan. 7, 1941, ch. 938, 54 Stat. 1226, related to reimbursement of deficits during Federal control.

Section 74, acts Feb. 28, 1920, ch. 91, § 206, 41 Stat. 461; Feb. 24, 1922, ch. 70, §§ 1, 2, 42 Stat. 393; Mar. 3, 1923, ch. 233, 42 Stat. 1443; Mar. 4, 1927, ch. 510, § 5, 44 Stat. 1450, related to causes of actions arising out of Federal control.

Section 75, act May 8, 1920, ch. 172, 41 Stat. 590, related to certificate of amounts due from carrier to President and deduction of amounts so certified.

Section 76, act Feb. 28, 1920, ch. 91, § 208(a), (b), 41 Stat. 464, related to continuance of existing rates.

Section 77, act Feb. 28, 1920, ch. 91, § 209, 41 Stat. 464, related to guaranty to carriers after termination of Federal control.

Section 78, act Feb. 28, 1920, ch. 91, § 211, 41 Stat. 464, related to execution of the powers by President.

Section 79, act Feb. 28, 1920, ch. 91, § 212, as added Feb. 26, 1921, ch. 72, 41 Stat. 1145, related to further certificates and warrants.

§ 80. Transferred

CODIFICATION

Section, act Feb. 28, 1920, ch. 91, § 213, as added Aug. 13, 1940, ch. 666, 54 Stat. 788, which related to disposition of securities, was transferred to section 316 of Title 40, Public Buildings, Property, and Works.

CHAPTER 4—BILLS OF LADING

Sec.

81. Transportation included.
82. Straight bill of lading.
83. Order bill of lading; negotiability.
84. Order bills in parts or sets; liability of carrier.
85. Indorsement on duplicate bill; liability.
86. Indorsement on straight bill.
87. Effect of insertion of name of person to be notified.
88. Duty to deliver goods on demand; refusal.
89. Delivery; when justified.
90. Liability for delivery to person not entitled thereto.
91. Liability for delivery without cancellation of bill.
92. Liability in case of delivery of part of goods.
93. Alteration of bill.
94. Loss, etc., of bill; delivery of goods on order of court.
95. Liability on bill marked "duplicate".
96. Claim of title as excuse for refusal to deliver.
97. Interpleader of conflicting claimants.
98. Reasonable time for procedure allowed in case of adverse claim.
99. Failure to deliver; claim of third person as defense.
100. Loading by carrier; counting packages, etc.; contents of bill.
101. Loading by shipper; contents of bill; ascertainment of kind and quantity on request.