LEGISLATIVE HISTORY

This section provides some legislative history on the transfer to the FERC of oil pipeline regulation. The reader should examine the Revised Interstate Commerce Act (P.L. 95-493) and the Department of Energy Organization Act (P.L. 95-91, as amended) together. These two acts have been codified as 49 U.S.C. § 1 et seq. and 42 U.S.C. § et seq., respectively.

Portions of House Report No. 95-1395 are reproduced. Pages 3013-14 provide the purpose and background of the Interstate Commerce Act revisions. Reference to page 3014 reveals that specific inquiry was made of the Office of the Law Revision Counsel with regard to "whether enactment of the bill would affect any rights or liabilities of oil pipelines." The response of the Law Revision Counsel is found at pages 3014-17.

A section by section summary of the revisions to the Interstate Commerce Act is next reproduced (pages 3020-31) as well as the revisions affecting oil pipelines. This is contained in Subchapter I - Rail, Rail-Water, Express, and Pipeline Carrier Transportation. Note, at page 3061, the transfer of pipeline transportation of oil from the Interstate Commerce Commission to the Department of Energy. See Section 306 and Section 402(a)(2)(B)(b) of the Department of Energy Organization Act. Section 402 of the Department of Energy Organization Act transferred the ICC's oil pipeline jurisdiction to the Federal Energy Regulatory Commission. The Department of Energy Organization Act was effectuated by Executive Order No. 12,009, 42 Fed. Reg. 46,267 (Sept. 13, 1977); implemented, 42 Fed. Reg. 55,534 (Oct. 17, 1977).

The Hepburn Act of 1906 (34 Stat. 589) began the regulation of interstate oil pipelines, making them common carriers and subject to rate regulation. The Act was an amendment to the existing Interstate Commerce Act (ICA) which, until 1906, had focused primarily on railroad and telegraph company regulation. The responsibility for regulating oil pipeline rates remained with the Interstate Commerce Commission (ICC) from 1906 until 1977 when the Department of Energy Act was enacted. (42 U.S.C. § 7101 et seq. (1988)). Pursuant to that Act, jurisdiction over oil pipeline rates was transferred from the ICC to the new Department of Energy and then to the Federal Energy Regulatory Commission (FERC). (42 U.S.C. §§ 7155, 7172(b) (1988)).

The ICA, as it exists today, and as it applied to other forms of transportation currently regulated by the ICC, is not the Act that applies to oil pipelines. Rather, regulation of oil pipelines is governed by the version of the ICA as it stood on the day of enactment of the Department of Energy Organization Act. In 1978, the ICA was partially repealed and recodified. However, Public Law No. 95-473, § 4(c); 92 Stat. 1466-1470 (1978) provides that those portions of the old ICA that were repealed and recodified in 1978, nevertheless remain in effect as they existed on October 1, 1977, to the extent that these laws relate to the movement of oil by pipeline and the rates and

charges relating thereto. Thus, the Act relating to oil pipeline regulation is found as an appendix to Volume 49 of the United States Code and is cited accordingly.

The ICA as it existed on October 1, 1977 applies to the regulation of rates and charges of common carriers engaged in the transportation of oil or other commodities except water and natural or artificial gas. Section 1 of the ICA provides that it "shall apply to common carriers engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by pipeline . . . 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 . . . . (49 App. U.S.C. § 1(1)(b) (1988)). "It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefore, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges and classifications applicable thereto . . . (49 App. U.S.C. § 1(4) (1988)). All charges made for any service for the transportation of oil or oil products shall be just and reasonable. (49 App. U.S.C. § 1(5)(a) (1988)).

Section 6 of the Act governs the filing of tariffs. (49 App. U.S.C. § 6(1) (1988)). No change in rates or terms of service can be made to any previously filed rate without a 30-day notice to the public and the FERC. (49 App. U.S.C. § 6(3) (1988)). The FERC's authority to investigate the lawfulness of an oil pipeline's rates and practices and to prescribe changes is derived from Sections 13 and 15 of the ICA. (49 App. U.S.C. §§ 13 and 15 (1988)). Specifically, Section 15(7) of the ICA gives the FERC authority, upon complaint or upon its own motion, to suspend the filing for up to seven (7) months and set a hearing concerning its lawfulness. (49 App. U.S.C. § 15(7) (1988)). At the end of the suspension period, the proposed tariff can go into effect, subject to refund, with interest until a final agency determination.

If a proposed rate has been filed and allowed by the FERC to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission. (49 App. U.S.C. § 13(1) (1988)). Based on such investigation, the Commission can set a new just and reasonable rate and award reparations (for up to two years) to the complainant. (49 App. U.S.C. § 16(1) (1988)).

Legislative History
Portions of H. R. No. 95-1395

Page 26, line 15, strike out "services" and substitute "transportation".

Page 26, line 27, strike out "railroads providing service" and substitute "rail carriers providing transportation".

Page 27, line 5, strike out "service" and substitute "transportation".

Page 27, line 23, insert "annual rate of basic" immediately before "pay", and strike out "annual" after "exceed the".

Page 28, line 16, strike out "service" and substitute "transportation".

[page 2]

Page 29, line 6, insert "annual rate of basic" immediately before "pay".

Page 29, line 7, strike out "annual rate for a" and substitute "rate for".

Page 29, line 11, strike out the comma.

Page 30, line 7, strike out "provisions of".

Page 31, strike out lines 37 and 38 and substitute the following:

to be made, the Commission may—

(A) require the rail carrier to make a suitable connection

Page 33, line 34, strike out "provisions of".

Page 37, line 20, strike out "fixed" and substitute "specified".

Page 37, line 40, strike out "subchapter—" and substitute "subchapter)—".

Page 38, line 26, strike out "or" and substitute "and".

Page 39, line 26, strike out "provisions of".

Page 39, line 27, immediately before the dash, insert "insofar as water carriers are concerned".

Page 43, line 20, strike out "of" and substitute "by".

Page 44, line 19, strike out "provisions of".

Page 45, after line 21, in item 10731, immediately before "rates", insert "rail".

Page 48, line 17, strike out "on its own initiative or".

Page 48, line 18, immediately before the period, insert "or on its own initiative for a water contract carrier or group of water contract carriers".

Page 56, line 5, immediately after "to", insert "a".

Page 61, line 38, immediately before "7", insert "not more than".

Page 62, line 16, strike out "related" and all that follows through "title" in line 18.

Page 62, lines 18 and 19, strike out "rail carriers" and substitute "that type of carrier".

Page 67, line 16, strike out "exclusively engaged" and substitute "engaged only".

Page 70, line 9, strike out the comma and substitute "to shippers,".

Page 70, line 10, strike out "to encourage shippers".

Page 70, line 31, immediately after "make", insert "easier".

Page 70, line 32, strike out "easier".

Page 71, line 2, strike out "Notwithstanding another law, a" and substitute "A".

Page 72, line 7, immediately before "rates", insert "rail".

REVISED INTERSTATE COMMERCE ACT

P.L. 95–473, see page 92 Stat. 1337

House Report (Judiciary Committee) No. 95–1395, July 26, 1978 [To accompany H.R. 10965]

Cong. Record Vol. 124 (1978)

DATES OF CONSIDERATION AND PASSAGE

House September 19, 26, 1978

Senate September 25, 1978

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 95–1395

[page 1]

The Committee on the Judiciary, to whom was referred the bill (H.R. 10965) to revise, codify, and enact without substantive change the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, "Transportation", having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

COMMITTEE AMENDMENTS TO H.R. 10965

Page 2, line 30, immediately before the period, insert "for compensation".

Page 5, line 13, strike out "artifical" and substitute "artificial".

Page 6, line 16, strike out the comma.

Page 17, line 20, strike out "or".

Page 25, lines 20 and 40, strike out "service" wherever it appears and substitute "transportation".

Page 26, lines 3, 10, 17, 22, 36, and 39, strike out "service" wherever it appears and substitute "transportation".

Page 26 line 13, immediately after "plan", insert "established under the Regional Rail Reorganization Act of 1973 (87 Stat. 985), as amended,".

Page 112, line 5, strike out "the motor vehicle".

Page 112, line 10, strike out "covered by" and substitute "exempt under".

Page 112, line 12, strike out "paragraph" and substitute "clause".

Page 112, line 31, immediately after "conditions", insert "and compensation".

Page 114, line 5, strike out "a".

Page 116, line 28, strike out "require" and substitute "direct".

Page 122, line 16, immediately after the semicolon, insert "and".

Page 132, line 3, immediately after "combination", insert "filed with the Commission before March 19, 1941,".

Page 132, lines 6 and 7, strike out "that was filed with the Commission before March 19, 1941,".

[page 4]

Page 134, lines 9 and 10, strike out "give weight to at least the following considerations:" and substitute "consider at least the following:".

Page 136, line 17, immediately before "are", insert "that".

Page 136, line 18, strike out "that" the last time it appears.

Page 138, line 8, strike "an" and substitute "a fair".

Page 138, line 8, strike "its".

Page 147, line 7, immediately after "agricultural", insert "purposes".

Page 153, line 30, strike out "prescribed" and substitute "of the Commission".

Page 155, line 26, strike out "Venue" and substitute "Trial".

Page 159, line 32, strike out "subsection (a) of this section" and substitute "paragraph (1) of this subsection".

Page 159, line 36, strike out "subsection (a) of this section" and substitute "this subsection".

Page 162, line 4, strike out "(a)" and substitute "(g)".

Page 166, line 25, strike out "or".

Page 170, strike out lines 3–6, and substitute the following:

A person, other than a common carrier, that violates sections 11343, 11344, 11345, 11346, or 11347 of this title shall be fined not more than $5,000.

Page 174, lines 10 and 12, strike out "February" wherever it appears and substitute "May".

Page 177, immediately below the item related to the Act of October 19, 1976, insert the following new item:

"1978
"Feb. 15 95-231---------- 92 29".

PURPOSE OF AMENDMENTS

Most of the amendments to the bill are of a clerical, typographical, and stylistic nature. The following is an explanation of other amendments to the bill:

Page 26, line 13—This amendment is made for greater precision in referring to the source provision under which the final system plan was adopted.

Page 48, lines 17 and 18—These amendments are made to conform to the source provision. See section 306(e) of the Interstate Commerce Act (49 U.S.C. 906(e)).

Page 72. line 36, strike out "only be made" and substitute "be made only".

Page 72. line 39. strike out "section 10701 or" and substitute "sections 10701 and".

Page 88. after line 31—

(A) in item 10903. strike out "service" and substitute "transportation": and

(B) in item 10906. strike out "or discontinued railroad" and substitute "rail".

Page 89. between lines 2 and 3, in item 10927. strike out "Insurance" and substitute "Security".

Page 90. line 29. strike out "service" and substitute "transportation".

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Page 94, lines 9, 10, and 12, strike out "railroad" wherever it appears and substitute "rail carrier".

Page 94. line 13, strike out "railroads" and substitute "rail carriers".

Page 95, line 12, strike out "or discontinued railroad" and substitute "rail".

Page 95. line 17, strike out "make a further finding whether the railroad" and substitute "find further whether the rail".

Page 95, line 21, strike out "railroad" and substitute "rail".

Page 99, line 12, strike out "only", and insert immediately after "passengers" the word "only".

Page 104. line 23. strike out "Insurance" and substitute "Security".

Page 104, line 27. strike out "an insurance policy" and substitute "a bond. insurance policy. or other type of security".

Page 104. lines 28 and 29. strike out "policy" wherever it appears and substitute "security".

Page 104, line 30. strike out "a person" and substitute "an individual".

Page 105. line 3, strike out "a policy" and substitute "the type of security".

Page 105. line 7. strike out "policy" and substitute "type of security".

Page 105. line 13. strike out "policy" and substitute "security".

Page 105, lines 16 and 22. strike out "an insurance policy" wherever it appears and substitute "a bond, insurance policy, or other type of security".

Page 105. lines 23 and 24, strike out "policy" wherever it appears and substitute "security".

Page 105. line 25. strike out "a person" and substitute "an individual".

Page 105. line 32. strike out "a policy" and substitute "a bond, insurance policy, or other type of security".

Page 105. line 34. strike out "policy" and substitute "security".

Page 105. line 36. strike out "kind" and substitute "type".

Page 105. lines 36 and 37, strike out "insurance policy" and substitute "security".

Page 111. line 22. strike out "to be used is that of".

Page 111. line 23. immediately after "(A)", insert "to be used is that of".

Page 111. line 25. strike out "; or" and substitute "or a motor private carrier;".

Page 112, line 1. strike out "a motor private carrier and it".

On October 27, 1977, Chairman Peter W. Rodino, Jr., introduced H.R. 9777. Drafts of this bill were circulated among the Commissioners of the Interstate Commerce Commission, the staff of the Commission, and interested members of the public. Comments were received and analyzed and changes made in preparing H.R. 9777 for introduction. After introduction, copies of the bill were circulated to interested members of the public and Government agencies. Additional comments were received and analyzed, and additional changes made. H.R. 10965 is H.R. 9777 with these additional changes.

Throughout the codification of subtitle IV of title 49, there was close liaison and cooperation between the Office of Law Revision Counsel and the Interstate Commerce Commission. The Law Revision Counsel has informed the Committee that he is satisfied that H.R. 10965 accurately states existing law without substantive change.

During consideration of the bill, H.R. 10965, by this Committee on July 25, 1978, Mr. Seiberling asked whether enactment of the bill would affect any rights or liabilities of oil pipelines. Mr. Rodino assured Mr. Seiberling that enactment of the bill will have no substan-

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tive effect on those rights or liabilities and agreed to insert in the report to accompany the bill a letter from the Law Revision Counsel on the issue. The letter is as follows:

U.S. HOUSE OF REPRESENTATIVES,
OFFICE OF THE LAW REVISION COUNSEL,
Washington, D.C., February 10, 1978.

Hon. PETER W. RODINO, Jr.,
Chairman, House Committee on the Judiciary,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: This Office has analyzed the issues raised by Congressman John F. Seiberling in his letter to you of January 11, 1978, about H.R. 9777 inadvertently repealing substantive provisions of the Interstate Commerce Act regarding oil pipelines. It is our opinion that the bill makes no substantive change affecting the obligations of pipeline carriers or existing remedies.

Sections 306 and 402(b) of the Department of Energy Organization Act (91 Stat. 581, 584; 42 U.S.C. 7155, 7172(b)) transferred functions and authorities vested in the Interstate Commerce Commission related to the transportation of oil by pipeline to the Department of Energy and to the Federal Energy Regulatory Commission. The conference report accompanying the Act explains that the functions of the Commission transferred to the Department of Energy include but are not limited to (1) the pipeline carrier's duty to provide transportation upon reasonable request, and to establish just and reasonable rates, (2) prohibitions against unreasonable prejudice or disadvantage, (3) the prohibition against charging different rates for the same transportation, (4) the requirement that a pipeline carrier file tariffs, (5) the prohibition against pooling agreements, and (6) the duty of pipeline carriers to file reports. (House Report 95-539, pages 69-70). The word "function" in the Act is used in an unusual and very broad sense,

Page 62, lines 16, 18, and 19—These amendments are made to conform to the source provisions. See sections 15(7), 216(g), 218(c), 307(g), 307(i), and 406(c) of the Interstate Commerce Act (49 U.S.C. 15(7), 316(g), 318(c), 907(i), and 1006(e)).

Page 174, lines 10 and 12—These amendments are made because the bill accounts for legislation enacted through May 15, 1978.

STATEMENT

Purpose.—The purpose of the bill is to restate in comprehensive form, without substantive change, the Interstate Commerce Act and related laws, and to enact those laws as subtitle IV of title 49, United States Code. In the restatement, simple language has been substituted for awkward and obsolete terms, and superseded, executed, and obsolete statutes have been eliminated. This bill is a part of the program of the Office of the Law Revision Counsel of the House of

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Representatives to prepare and submit to this Committee, for enactment into positive law, all titles of the United States Code.

Background.—In the Department of Transportation Act, Congress mandated a codification of the transportation laws. Congressional committees also expressed a strong desire that the Interstate Commerce Act and related statutes be codified. Considerable progress was made toward this end from 1968 to 1972 by the Joint Interagency Codification Project, a joint effort of the Department of Transportation, the Interstate Commerce Commission, and the Law Revision Counsel of the Committee on the Judiciary of the House of Representatives. More recently, in enacting section 312 of the Railroad Revitalization and Regulatory Reform Act of 1976, Congress required the Interstate Commerce Commission to submit to Congress within two years (by February 4, 1978) a proposed revision and codification of the laws related to interstate commerce.

Effective in 1975, the Office of the Law Revision Counsel was established as a separate office in the House of Representatives with overall responsibility to prepare bills to codify and enact into positive law the remaining uncodified titles of the United States Code. In view of consistent congressional concern in having the transportation laws codified in title 49, the Law Revision Counsel concluded that work on completing the codification of those laws should be resumed. He therefore proposed to the Interstate Commerce Commission and the Secretary of Transportation that joint codification efforts be resumed, and they concurred.

The revision and codification of the Interstate Commerce Act and related laws as subtitle IV of title 49 was completed first because fewer provisions of law are involved and because of the statutory deadline of February 4, 1978. Substantial work has been done in revising the other transportation laws. When completed, these revised laws will be submitted and considered for codification in title 49 as subtitle I, the Department of Transportation, subtitle II, transportation programs, subtitle III, air transportation, and subtitle V, miscellaneous provisions.

exclusive, original jurisdiction, without regard to the amount in controversy, of all cases and controversies (other than review of agency action) arising under the Act and regulations and orders issued under the act. By specifically affirming existing judicial review of agency action but remaining silent about the authority of a private party to bring a civil action directly against a pipeline carrier, the carrier can argue that the act intended to eliminate the right granted under the Interstate Commerce Act to a private party to sue a carrier. That kind of argument remains even if H.R. 9777 is not enacted.

A private party has several valid theories to counter such an argument. The first is that section 306 and 402(b) of the act transferred functions and authorities that include duties, prohibitions, and requirements that pipeline carriers have to follow. In imposing them, Congress obviously intended that all rights and remedies related to those duties, prohibitions, and requirements are included in the transfer. A private party therefore retains the right to bring a civil action that he could have brought if there were no transfer. By tracking the language of sections 306 and 402(b), H.R. 9777 does not affect the position of a private party in asserting this theory.

The second theory is that it is irrelevant whether the private right of action provisions of the Interstate Commerce Act are saved. Section 502(b) of the Energy Act specifically provided that the district

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1. 27 S.Ct. 350, 51 L.Ed. 553.
2. 41 S.Ct. 151, 65 L.Ed. 372.

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courts have original, exclusive jurisdiction of all cases and controversies other than review of agency action, arising under the act. In interpreting the comparable "arising under" language of sections 1331 and 1337 of title 28, the courts have held that the statutes only confer jurisdiction but do not themselves grant a right to bring an action. However, the courts will permit a private party to bring a civil action if the complaint seeks a remedy properly inferable from a law or if the civil action depends on the interpretation of the law. (See *Garrett* v. *Time-D.C., Inc.*, 502 F.2d 627, 9th Cir., 1974). In Garrett, the court upheld the right of a private party to bring an action under section 1337 for interest owed as the result of shipping overcharges The carrier had repaid the overcharges but refused to pay interest for the period the carrier had the overcharges. The court found a duty to pay the interest could be inferred from the Interstate Commerce Act and the court properly had jurisdiction under section 1337. No mention was made of section 9 of the Interstate Commerce Act that conferred a right on a private party to sue and also gave the district courts jurisdiction.

Applying the same reasoning, section 502(b) of the Department of Energy Organization Act gives the courts jurisdiction over cases arising under the Act. As long as a private party can show that the pipeline carrier is violating some duty, prohibition, or requirement, the party may bring the civil action.

There is one last reason why H.R. 9777 makes no substantive change. Section 3(a) of the bill provides that no substantive change is made in enacting the codification. The courts and legal authorities consistently hold that a change in language in a codification bill is presumed to make no substantive change. (See *Fourco Glass Co.* v. *Transmirra*

and is the authority for the continuing obligations of pipeline carriers by oil.

The savings clause of section 4(c) of H.R. 9777 uses the same words that sections 306 and 402(b) of the Energy Act use. The duties, prohibitions, and requirements that are imposed on pipeline carriers of oil under sections 306 and 402(b) are saved by section 4(c). The bill therefore does not affect obligations of a pipeline carrier by oil.

The Department of Energy Organization Act contains its own provisions on administrative procedures and review. Section 501 states the procedures for proceedings conducted by the Secretary of Energy and the Federal Energy Regulatory Commission. H.R. 9777 does not affect section 501 and that section therefore continues to apply to agency procedures.

Section 502 of the act provides for judicial review and the jurisdiction of district courts. Subsection (a) of section 502 states that judicial review of "agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission * * * shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law." The effect of this subsection is to incorporate by reference the judicial review provisions of the Interstate Commerce Act as of Octo-

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ber 1, 1977 (the effective date of the act) in reviewing agency action of former Interstate Commerce Commission functions now performed by the Department of Energy and the Federal Energy Regulatory Commission. H.R. 9777 does not affect subsection (a), and any person may therefore continue to seek judicial review under that subsection.

The one remaining question is whether a private party may bring a civil action against another private party, especially a pipeline carrier by oil, for a violation of that carrier's duties or requirements or acting contrary to a prohibition. Under the doctrine of primary jurisdiction a court may not decide a matter committed to an administrative agency to determine, such as the reasonableness of rates. (*Texas & Pacific Railway Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 1907;[1] *Director General of Railroads* v. *Viscose Co.*, 254 U.S. 498, 1921).[2] Most of the duties, requirements, and prohibitions under the Interstate Commerce Act involve an agency determination (See the table on pages 7-9 of the proposed report to accompany H.R. 9777, Committee Print No. 10). The private party will therefore in most cases be directed to the agency having the responsibility for determining whether a carrier has violated a duty, requirement, or prohibition that first requires an agency decision. Once the agency decides, the private party may then seek judicial review. In case of an administrative action under the Department of Energy Organization Act, section 502(a) would then apply.

A private party may have a claim against a pipeline carrier by oil involving the small number of cases in which the doctrine of primary jurisdiction does not apply. That party will be faced with a problem. That problem, however, arises because of the Department of Energy Organization Act and not because of H.R. 9777. Section 502(a) of the act specifically reaffirms that agency action arising out of transferred functions is judicially reviewed as if the functions had not been transferred. Section 502(b) gives the district courts of the United States

Commerce Commission" is used the first time the title appears in a section. Subsequently, in the same section, the title "Commission" is used.

The words "under section —" are used instead of "pursuant to section —" and "in accordance with section —".

The word "such" is not used as a demonstrative adjective. The use of the word "each", "any", "every", or "all" is confined to instances in which it is feared that doubt would arise if the word were not used.

Provisos are not used. An exception or limitation is introduced by the words "except that" or "but" or by placing the excepting or limiting provision in a separate sentence.

The phrase "territories and possessions" is substituted for "Territory", "Territories", and "Territories and possessions" as there are now no "Territories" and to preserve the intended coverage and acquire consistency in language. Unless specifically stated, the phrase does not include the Commonwealth of Puerto Rico because of section 751 of title 48.

Substantive change not intended.—Like other codifications undertaken to enact into positive law all titles of the United States Code, this bill makes no substantive change in the law. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation where it can be inferred that a change of language is intended to change substance. In a codification statute, however, the courts uphold the contrary presumption: the statute is intended to remain substantively unchanged.

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The following authorities affirm this principle:

Stewart v. *Kahn* (11 Wall. 493, 502 (1871)).
Smythe v. *Fiske* (23 Wall. 374, 382 (1874)).
McDonald v. *Hovey* (110 U.S. 619, 628 (1884))[4].
United States v. *Ryder* (110 U.S. 729, 740 (1884))[5].
United States v. *Sischo* (262 U.S. 165, 168 (1923))[6].
Fourco Glass Co. v. *Transmirra Products Corp.* (353 U.S. 222, 227 (1957))[7].
Walsh v. *Commonwealth* (224 Mass. 239, 112 N.E. 486, 487 (1916)).
State ex rel. Rankin v. *Wilbaux County Bank* (85 Mont. 532, 281 Pac. 341, 344 (1929)).
In re Sullivan's Estate (38 Ariz. 387, 300 Pac. 193, 195 (1931)).
Sigal v. *Wise* (114 Conn. 297, 158 Atl. 891, 894 (1932)).
Martin v. *Dyer-Kane Co.* (113 N.J. Eq. 88, 166 Atl. 227, 229 (1933)).
Norfolk & Portsmouth Bar Ass'n. v. *Drewry* (161 Va. 833, 172 S.E. 282, 285 (1934)).
Sutherland, *Statutory Construction* (4th ed., Sands, 1972), secs. 28.10, 28.11.

Tables.—Tables are provided at the end of this report to show the disposition of the statutes affected by the revision and codification of the laws affected by the bill.

Products Corp., 353 U.S. 222, 227, 1957[3], and other cases and authorities cited at pages 3 and 4 of the proposed draft report to accompany H.R. 9777, Committee Print No. 10). Under the proviso of section 204(a) of title 1, positive law titles of the United States Code are legal evidence of the law. Even if the language used in the codification *appears* to make a substantive change, the courts will look to the predecessor statute and legislative history if necessary to interpret the language of the codification.

Sincerely,

EDWARD F. WILLETT, JR.,
Law Revision Counsel.

Revision of language.—To restate the laws related to transportation in one comprehensive title, it is necessary to make changes in language. Some of the changes are necessary to attain uniformity within the title. Others are necessary as the result of consolidating related provisions of law and to conform to common contemporary usage. In making changes in the language, precautions have been taken against making substantive changes in the law.

Revision notes.—A revision note has been prepared for each section of the revised subtitle IV of title 49. The revision notes explain the changes made in the source laws. Each note identifies that statutory basis or source of the section and explains significant changes in, and omissions of, language. When practical, word-for-word substitutions of language are identified and explained. Standard changes made

3. 77 S.Ct. 787, 1 L.Ed.2d 786.

throughout the revision to achieve internal consistency are not explained each time they are made.

Standard changes.—Certain standard changes are made uniformly throughout the revised subtitle IV of title 49. Some of these are explained in section 10102, "Definitions". The most significant of the other standard changes are explained in the following paragraphs:

As far as possible, the statute is stated in the present tense and in the active voice. When there is a choice of 2 or more words, otherwise of equal legal effect, the more commonly understood word is used.

The word "shall" is used in the mandatory and imperative sense. The word "may" is used in the permissive and discretionary sense, as "is permitted to" and "is authorized to". The words "may not" are used in a prohibitory sense, as "is not authorized to" and "is not permitted to". The words "person may not" mean that no individual is required, authorized, or permitted to do the act.

The words "any part of" means "all or part of" and "in whole or in part". The word "includes" means "includes but is not limited to". The word "considered" denotes the exercise of judgment. The word "deemed" is used where a legal fiction, or what may in some cases be a legal fiction, is intended. The word "is" is used for statements of fact.

When a right is conferred, the words "is entitled" or their equivalent are used.

The first time a descriptive title is used in a section, the full title is used. Thereafter, in the same section, a shorter title is used unless the context requires the full title to be used. For example, "Interstate

state Commerce Commission for comment. The committee received the following letter from the Interstate Commerce Commission:

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 29, 1978.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR CHAIRMAN RODINO: The Interstate Commerce Commission has reviewed H.R. 10965, which is the revised version of the codification of the Interstate Commerce Act. We wish to submit for your consideration the following recommended changes:

Section 10102(1):

This paragraph should be revised to provide that a broker, as defined in the subtitle, is one who provides services "for compensation." This is an important distinction because many civic groups engage in what are technically brokerage operations, but without receiving compensation. This change would bring this paragraph into conformity with present section 211(a) of the act.

Section 10526(a)(2):

In this paragraph, the term "fixed places" is used. However, in section 10922(c)(3) the term "specified places" appears. In both instances, the wording of the present statute is "fixed termini." We believe that the language in these two sections should be uniform, and we suggest using "specified places" in section 10526 (a)(2).

Section 10708(c):

This subsection does not correctly reflect the provisions of present section 15(7) of the act. The language of section 10708(c) of H.R. 9777 is an accurate rewriting of present law and should be substituted.

Section 10927:

This section consistently uses the term "insurance policy" to mean the type of bond or other security a motor carrier, broker, or freight forwarder must file with the Commission for the protection of the public. The language of sections 211, 215, and 403 of the act is broader, and we suggest that section 10927 be framed to make

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it clear that a carrier must file "a bond, insurance, or other type of security approved by the Commission."

Subject to these few qualifications, we urge favorable consideration of H.R. 10965 by the committee and its speedy enactment.

Sincerely yours,

A. DANIEL O'NEAL,
Chairman.

SECTION-BY-SECTION SUMMARY

SECTION 1—EXPLANATION OF REVISED TITLE 49

Section 1 of the bill enacts as subtitle IV of title 49, United States Code, the Interstate Commerce Act and related laws.

COMMITTEE VOTE

At a meeting of the Committee on the Judiciary on July 25, 1978, a quorum being present, H.R. 10965 was approved by a unanimous vote and ordered reported.

STATEMENT UNDER CLAUSE 7(a) OF RULE XIII

The Committee estimates that the enactment of H.R. 10965 will result in no additional costs. No Government agency has submitted to the Committee an estimate of costs of the bill.

STATEMENTS UNDER CLAUSE 2(l)(3) AND (4) OF RULE XI

Since the purpose of H.R. 10965 is to codify changes in the law without making any substantive change in the law, no oversight findings or recommendations have been made with respect to the bill.

The bill does not provide new budget authority or new or increased tax expenditures.

The enactment of the bill will have no inflationary impact on prices or cost in the operation of the national economy.

The Director of the Congressional Budget Office has submitted the following letter reporting on the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 25, 1978.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R.

4. 4 S.Ct. 142, 28 L.Ed. 269.
5. 4 S.Ct. 196, 28 L.Ed. 308.
6. 43 S.Ct. 511, 67 L.Ed. 925.
7. 77 S.Ct. 787, 1 L.Ed.2d 786.

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10965, a bill to revise, codify, and enact without substantive change the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, "Transportation", as ordered reported by the House Committee on the Judiciary, July 25, 1978.

Based on this review, it appears that no additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

AGENCY COMMENTS

In an effort to achieve the greatest degree of accuracy possible, the Law Revision Counsel submitted each draft of the bill to the Inter-

tion policy of the Congress" for clarity since the policy has been enacted into law. The words "fair and" are omitted to eliminate redundancy. The words "subject to this subtitle" are substituted for "subject to the provisions of this act" for clarity and to conform to the revised title.

In subsection (a)(2), the words "efficient transportation" are substituted for "efficient service" for clarity and consistency in view of the definition of "transportation" in section 10102 of the revised title.

In subsection (a)(3), the words "encourage sound" are substituted for "foster sound" for clarity. The words "including sound economic conditions among carriers" are substituted for "and among the several carriers" for clarity.

In subsection (a)(4), the word "rates" is substituted for "charges" for clarity and consistency. The words "unreasonable discrimination" are substituted for "unjust discriminations, undue preferences or advantages" for clarity, consistency, and to conform to modern usage. See the note after the revision note for subsection (b).

In subsection (a)(5), the words "officials of each State" are substituted for "duly authorized official thereof" for clarity.

In subsection (a)(6), the words "in the transportation industry" are inserted for clarity.

In subsection (b), the words "with a view" and "the above declaration" are omitted as unnecessary. The word "subtitle" is substituted for "Act" to conform to the revised title.

Clarification of use of "reasonable" and "discrimination"

Throughout the bill, the term "reasonable" is substituted for "just and reasonable" and "discrimination" is substituted for "preference", "prejudice", "advantage", and "disadvantage" for clarity, consistency, and to conform to modern usage. See *Missouri, Kansas & Texas Railway Co.* v. *Harriman*, 227 U.S. 657,1913[8]; *United States* v. *P. Koenig Coal Co.*, 270 U.S. 512,1926[9]; *Arizona Grocery Co.* v. *Atchison, Topeka & Santa Fe Railway Co.*, 284 U.S. 370,1932[10]; *Union Pacific R. Co.* v. *United States*, 313 U.S. 450,1941[11]; *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575,1942[12]; *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591,1944[13]; *United States ex rel. Morris* v. *Delaware, L. & W.R. Co.*, 40 F. 101, Cir. Ct. N.Y., 1889. The change does not affect the substantive law. The words for which the substitutions are made are used inconsistently throughout the Interstate Commerce Act and related laws and are often used in series with other synonymous words. As the editors of the U.S. Code Service point out in an explanatory note to section 2 of title 49:

> *Explanatory note.*—In using the annotations following, it must be borne in mind that the words "unjust discrimination" [the term employed in this section] and "preference and prejudice" [the terms employed in § 3(1) of this title] have been used in innumerable instances by the courts and by the com-

8. 33 S.Ct. 397, 57 L.Ed. 690.
9. 46 S.Ct. 392, 70 L.Ed. 709.
10. 52 S.Ct. 8, 76 L.Ed. 515.
11. 61 S.Ct. 1064, 85 L.Ed. 1453.
12. 62 S.Ct. 736, 86 L.Ed. 1037.
13. 64 S.Ct. 281, 88 L.Ed. 333.

TITLE 49—TRANSPORTATION

SUBTITLE	Sec.
I. [RESERVED—DEPARTMENT OF TRANSPORTATION]	
II. [RESERVED—TRANSPORTATION PROGRAMS]	
III. [RESERVED—AIR TRANSPORTATION]	
IV. INTERSTATE COMMERCE	10101
V. [RESERVED—MISCELLANEOUS]	

SUBTITLE IV—INTERSTATE COMMERCE

CHAPTER	Sec.
101. GENERAL PROVISIONS	10101
103. INTERSTATE COMMERCE COMMISSION	10301
105. JURISDICTION	10501
107. RATES, TARIFFS, AND VALUATIONS	10701
109. LICENSING	10901
111. OPERATIONS OF CARRIERS	11101
113. FINANCE	11301
115. FEDERAL-STATE RELATIONS	11501
117. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES	11701
119. CIVIL AND CRIMINAL PENALTIES	11901

CHAPTER 101—GENERAL PROVISIONS

Sec.
10101. Transportation policy.
10102. Definitions.
10103. Remedies as cumulative.

SECTION 10101

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10101	49: 1 (note)	Feb. 4, 1887, ch. 104, 24 Stat. 379; added Sept. 18, 1940, ch. 722, § 1 (2d unnumbered par.), 54 Stat. 899.

In the introductory matter before clause (1) of subsection (a), the words "To ensure" are substituted for "all to the end of" for clarity. The words "by water, highway, and rail, as well as other means" are omitted as unnecessary. The words "that meets" are substituted for

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"adequate to meet" for clarity. The words "transportation needs of the United States" are substituted for "the needs of the commerce of the United States" for clarity. The words "including the" are inserted for clarity. The words "United States Postal Service" are substituted for "Postal Service" to reflect the complete name of the Government agency. The words "it is the policy of the United States Government" are substituted for "It is hereby declared to be the national transporta-

Interstate Commerce Act section	*Words on*
3(4)	"reasonable, proper, and equal facilities for the interchange of traffic", "shall not discriminate in their rates, fares, and charges between connecting lines", "unduly prejudice".
3(5)	"just and reasonable" terms of compensation.
4(1)	"reasonably compensatory".
5(2)(b)	"just and reasonable" modifications.
10(1)	"unlawful discrimination in rates, fares, or charges".
10(4)	"discriminate unjustly", "unjust discrimination".
12(1)(b)	"undue burden" on a person, class of persons, or interstate or foreign commerce.
13(4)	"undue or unreasonable advantage, preference, or prejudice", "undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce".
15(1)	"unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial", "just and reasonable . . . rate, fare, or charge", "just, fair, and reasonable [classification, regulation, or practice]".
15(6)(a)	"unjust, unreasonable, inequitable, or unduly preferential or prejudicial [division of joint rates, fares, or charges]", "just, reasonable, and equitable divisions".
15(7)	"lawfulness of such rate, fare, charge, classification, regulation, or practice", rates or charges "not justified", "just and reasonable".
15(8)(a)	"lawfulness" of such rate, fare, charge, classification, regulation, or practice.
15(8)(b)	rate "exceeds a just and reasonable level".
15(8)(d)	"unlawful" rate increase or decrease.
15(8)(e)	"lawful" rate, fare, or charge decrease.
15(8)(f)	"just and reasonable" changed rate, fare, charge, classification, rule, or regulation.
15(9)	"unreasonably high" rate, "lawfulness", "just or reasonable" maximum increased rate.
15(15)	"just and reasonable [charge and allowance]", "reasonable [maximum] charge".
15(19)	"unlawful [schedule]".
15a(2)	"just and reasonable rates".
15a(3)	"a reasonable minimum rate".
15a(4)	"fair, reasonable, and economic profit or return (or both)".
16(5)	"lawfulness of rates, fares, charges, classifications, or practices".
17(7)	"unjust or unwarranted" decision.
204(a)(1), (2)	"reasonable requirements" for service, transportation of baggage and express, uniform system of accounts, etc.
204(a)(3)	"reasonable requirements" to promote safety.
204(a)(4)	"reasonable requirements" for licensing brokers, etc.
204(b)	"just and reasonable classifications" of brokers and groups of carriers.
204a(5)	reparations are damages from charges that are "unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial".
216(a)	"reasonable through routes", "just and reasonable . . . rates, fares, and charges", "just and reasonable regulations and practices", "just, reasonable, and equitable divisions [of rates, fares, and charges]".
216(b)	"just and reasonable rates, charges, and classifications", "just and reasonable regulations and practices".
216(c)	"reasonable through rates and joint rates, charges, and classifications", "just and reasonable regulations and practices", "just, reasonable, and equitable divisions", "unduly prefer or prejudice".

mission as interchangeable. The Elkins Act [§§ 41–43 of this title] employs the word "discrimination" without the qualifying adjective "unjust." It is impossible in the great majority of cases to determine from the opinions whether this section, or § 3(1) of this title, or the Elkins Act [§§ 41–43 of this title] was the basis of the decision, because of the use of the terms interchangeably, or the use of "unjust discrimination" as covering violations of § 3(1) of this title, or the omission to specify the particular provision of law under immediate consideration, or because both this section and § 3(1) of this title, may have been pleaded and referred to as the basis of the decision. There is some similar confusion in the cases between this section and the provisions of § 1(5) of this title, requiring all rates to be just and reasonable, and § 1(6) of this title, requiring just and reasonable classifications, and transportation regulations and practices.

While the amendments made to the Interstate Commerce Act by Public Law 94–210 continued the use of the multiple synonyms, that continuation is not significant since those amendments did not restate the entire act. Should a question ever arise concerning this change, section 3 of the bill would require the legal conclusion that no change in substance was intended. The following table identifies those sections of the Interstate Commerce Act that use the terms discussed in this note.

Interstate Commerce Act section	*Words used*
Before § 1	"reasonable charges", "unjust discriminations", "undue preferences or advantages", "unfair or destructive competitive practices".
1(4)	"reasonable through routes", "just and reasonable rates, fares, charges, and classifications", "reasonable facilities", "just, reasonable, and equitable divisions [of joint rates, fares, or charges]".
1(5)(a)	"unduly prefer or prejudice", "just and reasonable [charges]", "unjust and unreasonable charge".
1(5)(b)	"just and reasonable [rates]", "unjust or unreasonable [rates]".
1(6)	"just and reasonable classifications of property", "just and reasonable regulations and practices", "just and reasonable terms", "unjust and unreasonable classification, regulation, and practice".
1(9)	"without discrimination".
1(11)	"just and reasonable rules, regulations, and practices with respect to car service", "unjust and unreasonable".
1(12)	"just and reasonable distribution of cars", "just and reasonable ratings", "justness and reasonableness of, or discrimination or preference or prejudice or advantage or disadvantage in, the distribution of cars".
1(15)	"just and reasonable directions", "just and reasonable" terms of compensation.
1(16)(a)	"just and reasonable directions".
1(17)(a)	"just and reasonable freight and passenger service".
2	"unjust discrimination".
3(1)	"undue or unreasonable preference or advantage", "undue or unreasonable prejudice or disadvantage".
3(2)	"unjust discrimination".

Words on

307(1)	"lawfulness of such charge, or such rule, regulation, or practice".
314	"just and reasonable [charge or allowance]", "reasonable charge".
315(a)	"lawfulness of rates, fares, charges, classifications, or practices".
316(b)	"reasonableness of rates, fares, or charges, and the discriminatory character thereof".
403(b)	"reasonable requirements" for service.
404(a)	"just and reasonable rates and charges", "just and reasonable classifications, regulations, and practices", "unjust or unreasonable rate, charge, classification, regulation, or practice".
404(b)	"undue or unreasonable preference or advantage", "unjust discrimination or any undue or unreasonable prejudice or disadvantage".
404(c)	"undue or unreasonable preference or advantage", "undue or unreasonable prejudice or disadvantage".
405(c)	rates or charges "lawfully in effect".
406(b)	rate or charge: "unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial", "lawful" rate, charge, maximum, minimum, classification, regulation, or practice.
406(c)	"justness or reasonableness of any rate or charge".
406(d)	"just and reasonable rates and charges . . ., and classifications, regulations and practices".
406(e)	"lawfulness" of the rate, charge, classification, regulation, or practice.
406(f)	"rate, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice", "undue, unreasonable, or unjust discrimination against interstate commerce".
406(a)(5)	"unjust and unreasonable [charges], or unjustly discriminatory or unduly preferential or unduly prejudicial".
409(a)	"just, reasonable, and equitable terms, conditions, and compensation which shall not unduly prefer or prejudice".
414	"unjust discrimination or undue preference or prejudice".
415	"just and reasonable" charges and allowances.
416(a)	"lawfulness of rates, charges, classifications, or practices"

SECTION 10102

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10102(1)	49: 303(a)(18)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 203(a)(1), (8), (9), (12), (13), (14) (less exception), (15), (16), (17), (18), (19); added Aug. 9, 1935, ch. 498, § 1, 49 Stat. 544; June 29, 1938, ch. 811, § 2, 52 Stat. 1237; Sept. 18, 1940, ch. 722, § 18, 54 Stat. 920; Sept. 1, 1950, ch. 835, § 1(a), 64 Stat. 574; Aug. 22, 1957, Pub. L. 85-163, § 1(1), 71 Stat. 411.
10102(2)	(no source)	
10102(3)	49: 1(10)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 1(10); added May 29, 1917, ch. 23, § 1, 40 Stat. 101; restated Feb. 28, 1920, ch. 91, § 402, 41 Stat. 476; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.

Interstate Commerce Act section	*Words on*
216(d)	"just and reasonable [charges]". "unjust and unreasonable charge". "undue or unreasonable preference or advantage". "unjust discrimination". "undue or unreasonable prejudice or disadvantage".
216(e)	"unjust or unreasonable [rate, fare, charge, classification, rule, regulation, or practice of a service]". "unjustly discriminatory or unduly preferential or unduly prejudicial". "lawful rate, fare, or charge or the maximum or minimum rate, fare, or charge". "lawful classification, rule, regulation, or practice".
216(f)	division of joint rates, fares, and charges: "unjust, unreasonable, inequitable, or unduly preferential or prejudical". "just, reasonable, and equitable divisions".
216(g)	"lawfulness of such rate, fare, or charge, or such rule, regulation, or practice". "proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable".
216(h)	"justness and reasonableness of any rate, fare, or charge".
216(i)	"just and reasonable rates, fares, and charges . . . and classifications, regulations, and practices".
218(a)	"reasonable minimum rates and charges", "reasonable regulations and practices".
218(b)	"just and reasonable minimum rate or charge, or such rule, regulation, or practice".
218(c)	"lawfulness of such charge, or such rule, regulation, or practice".
221(a)	"lawfulness of rates, fares, charges, classifications, or practices".
304(c)	"just and reasonable classifications of groups of carriers".
304(d)	"undue disadvantage".
305(a)	"just and reasonable rates, fares, charges, and classifications, and just and reasonable regulations and practices", "unjust and unreasonable charge [for a service]".
305(b)	"reasonable through routes", "just and reasonable rates, fares, charges, and classifications", "reasonable facilities", "reasonable rules and regulations", "reasonable through routes and rates, fares, charges, and classifications", "just reasonable, and equitable divisions".
305(c)	"undue or unreasonable preference or advantage", "unjust discrimination or any undue or unreasonable prejudice or advantage, or an unfair or destructive competitive practice".
305(d)	"reasonable, proper, and equal facilities", "not discriminate [in rates, fares, and charges], or unduly prejudice . . .".
306(e)	"reasonable minimum rates and charges", "reasonable regulations, and practices", "reasonable minimum rates and charges".
307(b)	"unjust or unreasonable [rate, fare, charge, regulation, practice, or classification]", "unjustly discriminatory or unduly preferential or prejudicial", "lawful rates, fare, or charge or the maximum or minimum", "lawful regulation, practice, or classification".
307(c)	"justness or reasonableness of any rate, fare, or charge".
307(d)	"reasonable differentials".
307(e)	division of joint rates: "unjust, unreasonable, inequitable, or unduly preferential or prejudicial", "just, reasonable, and equitable divisions".
307(f)	"just and reasonable rates, fares, and charges. . . . and classifications, regulations, and practices".
307(g)	"lawfulness of such rate, fare, charge, classification, regulation, or practice".
307(h)	"just and reasonable minimum rate or charge, or such rule, regulation, or practice". "no advantage or preference".

SECTION 10102—Continued

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10102(21)	49: 303(a)(8) 49: 902(k). 49: 1002(a)(3).	
10102(22)	(no source).	
10102(23)	49: 1(3)(a) (4th sentence). 49: 303(a)(19). 49: 902(g), (h).	
10102(24)	49: 902(j) 49: 1002(a)(4).	
10102(25)	49: 902(f)	
10102(26)	49: 902(c)	
10102(27)	49: 902(d) (less exception).	
10102(28)	49: 902(e) (1st and 2d sentences).	

In clause (1), the words "bona fide" are omitted for consistency and as being unnecessary. The words "transportation by motor carrier" are substituted for "transportation subject to this chapter" and "such transportation" for clarity and because the jurisdiction of the Commission is stated separately in chapter 105 of the revised title and is unnecessary to be referred to in a definition. The words "furnishes, contracts" are omitted for consistency and as being surplus.

Clauses (2) and (4) are included because a number of the provisions of the subtitle relate to all carriers and all common carriers, respectively, subject to the jurisdiction of the Commission, and the terms "common carriers" and "carrier" provide simple phrases to refer to those carriers.

In clause (3), the words "subject to this chapter" are omitted as unnecessary in the definition and because the jurisdiction of the Commission is stated separately in chapter 105 of the revised title.

Clause (5) is included because a number of the provisions of the subtitle relate to motor contract carriers and water contract carriers, and the term "contract carrier" provides a simple phrase to refer to both of those kinds of carriers.

In clause (6), the words "or persons", "shall be construed to", "or trusts", "or companies", and "direct or indirect" are omitted for consistency and as being surplus. The words "reason of the method of or circumstances surrounding organization or operation, through or by" are omitted as unnecessary as being included in the words "power to exercise control". In 49 : 1(3)(b), the phrase "For the purposes of sections 5, 12(1), 20, 304(a)(7), 310, 320, 904(b), 910, and 913 of this title" is omitted for consistency and as being unnecessary because the sections referred to, and 49 : 1002(a)(8), have the effect of applying the "control" definition to the subtitle.

In clauses (7), (16), (17), and (20), the words "for compensation" are substituted for "for hire" for consistency.

SECTION 10102—Continued

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10102(4)	49: 1(3)(a) (1st sentence).	Feb. 4, 1887, ch. 104, § 1(3)(a), 24 Stat. 379; restated June 29, 1906, ch. 3591, § 1, 34 Stat. 584; restated Feb. 28, 1920, ch. 91, § 400, 41 Stat. 474; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, § 2(a), 54 Stat. 899.
	49: 303(a)(14) (less exception).	
	49: 902(d) (less exception).	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 302(a), (c), (d) (less exception), (e) (1st and 2d sentences), (f), (g), (h), (j), (k), (l), (m); added Sept. 18, 1940, ch. 722, § 201, 54 Stat. 929.
	49: 1002(a)(5)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 402(a)(1), (3), (4), (5), (8); added May 16, 1942, ch. 318, § 1, 56 Stat. 284; Dec. 20, 1950, ch. 1140, § 1, 64 Stat. 1113.
10102(5)	(no source).	
10102(6)	49: 1(3)(b)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 1(3)(b); added Sept. 18, 1940, ch. 722, § 2(b), 54 Stat. 899.
	49: 1002(a)(8)	
10102(7)	49: 1(3)(a) (1st sentence related to express carriers), (2d sentence).	
	49: 303(a)(9).	
10102(8)	49: 1002(a)(5)	
10102(9)	49: 303(a)(12)	
10102(10)	49: 303(a)(16)	
10102(11)	49: 303(a)(14) (less exception).	
	49: 902(m).	
10102(12)	49: 303(a)(15)	
10102(13)	49: 303(a)(17)	
10102(14)	49: 303(a)(13)	
10102(15)	49: 1(3)(a) (last sentence).	
	49: 303(a)(1).	
	49: 902(a).	
	49: 1002(a)(1).	
10102(16)	49: 1(3)(a) (1st sentence related to pipeline carriers), (2d sentence).	
10102(17)	49: 1(3)(a) (2d sentence).	
	49: 902(l).	
10102(18)	49: 1(3)(a) (3d sentence).	
10102(19)	49: 1(5)(c)(ii)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 1(5)(c)(ii); added Feb. 5, 1976, Pub. L. 94–210, § 202(b), 90 Stat. 35.
10102(20)	49: 1(3)(a) (1st sentence related to sleeping car carriers), (2d sentence).	

ship, corporation, company, association, or joint stock association" for consistency since section 1 of title 1, United States Code, is applicable to all laws unless otherwise provided.

In clause (18), the words "a contract" and "or lease" are omitted as unnecessary because they are included in the word "agreement". The words "of every kind" are omitted as unnecessary. The words "persons or property" and "or delivery" are omitted as unnecessary because those terms are included in the definition of transportation.

In clause (19), the word "charge" is inserted for clarity. The definition is made applicable to the entire subtitle to eliminate repetition of the words "fares or charges". The words "persons or property" are omitted as unnecessary in view of the definition of transportation that includes passengers and property.

In clause (22), the definition of the word "tariff" is added for clarity.

Clause (23) consolidates and restates the source provisions for clarity and consistency. The words "express or implied" are omitted as unnecessary and for consistency. In 49:1(3)(a) (4th sentence), the word "agreement" is substituted for "contract" for consistency. In 49:303(a)(19), the word "service" is omitted to provide only one defined term for consistency in the codification of the subtitle. In 49:303(a)(19), the words "in interstate or foreign commerce" are omitted for consistency and as being unnecessary in view of the restatement of the various definitions of "interstate commerce" and "foreign commerce" as grants of jurisdiction to the Commission under chapter 105 of the revised title. In 49:902(g), the words "of any kind" are omitted as unnecessary. In 49:902(h), the words "interchange of passengers and property" are substituted for "property transported or the interchange thereof with any other agency of transportation" for consistency and clarity.

In clause (25), the words "of whatever description" are omitted as unnecessary.

In clause (27), the words "in interstate or foreign commerce of passengers or property or any class or classes thereof" are omitted as unnecessary in view of the restatement of the various definitions of "interstate commerce" and "foreign commerce" as grants of jurisdiction to the Commission.

In clause (28), the words "other than a water common carrier" are substituted for "other than transportation referred to in paragraph (d) of this section" as being more precise. The words "and the exception therein" are omitted for consistency and as being unnecessary in view of the restatement of the exception in section 10502 of the title as a jurisdictional provisional provision. The words "contracts or" are omitted as surplus and for consistency. The words "of passengers or property in interstate or foreign commerce" are omitted as unnecessary in view of the restatement of the various definitions of "interstate commerce" and "foreign commerce" as grants of jurisdiction to the Commission.

In clause (7), the words "natural or artificial" are omitted as surplus in view of the definition of "person" in this section and in section 1 of title 1. The words "providing express transportation" are substituted for "engaged in such transportation as aforesaid" in view of chapter 105 of the revised title.

In clause (8), the words "to transport or" are omitted as surplus because of the use of the broader phrase "provide transportation". The words "or any class or classes of property, . . . in interstate commerce" are omitted as unnecessary in view of the restatement of the various definitions of "interstate commerce" and "foreign commerce" as grants of jurisdiction to the Commission. The words "ordinary course of its business" are substituted for "ordinary and usual course of its undertaking" for clarity. The word "place" is substituted for "point" for consistency.

In clause (11), the words "in interstate or foreign commerce of passengers or property or any class or classes thereof" are omitted as unnecessary in view of the restatement of the various definitions of "interstate commerce" and "foreign commerce" as grants of jurisdiction to the Commission under chapter 105 of the revised title. The words "or both" are inserted for clarity.

In clause (12), the words "of passengers or property in interstate or foreign commerce" are omitted for consistency and as being unnecessary in view of the restatement of the various definitions of "interstate commerce" and "foreign commerce" as grants of jurisdiction to the Commission. The words "other than a motor common carrier" are substituted for "other than transportation referred to in paragraph (14) of this subsection" as being more precise. The words "and the exception therein" are omitted for consistency and as being unnecessary in view of the restatement of the exception in section 10502 of this title as a jurisdictional provision. The word "agreements" is substituted for "contracts" for consistency. The words "furnishing of transportation services" are omitted as surplus and for clarity. The words "each such person" are substituted for "each individual customer" for consistency within the clause.

In clause (13), the words "motor private carrier" are substituted for "private carrier of property by motor vehicle" for clarity. The words "other than a motor carrier" are substituted for "not included in the terms 'common carrier by motor vehicle' or 'contract carrier by motor vehicle'" in view of the definition in clause (10) that includes both such carriers. The words "the purpose of" are omitted as surplus. The words "as provided in section 10521(a) (1) and (2) of this title" are substituted for "interstate or foreign commerce" in view of the codification of the latter term from 49:303(a) (10) and (11) in section 10521(a) of the revised title.

In clause (14), the words "or rails" are omitted as surplus. The words "of passengers or property" are omitted as unnecessary in view of the definition of transportation that includes passengers and property.

In clause (15), the words "in addition to its meaning under section 1 of title 1" are substituted for "includes an individual, firm, copartner-

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10103	49: 20(11) (2d sentence, 1st proviso).	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 20(11) (2d sentence, 1st proviso); added June 29, 1906, ch. 3591, § 7, 34 Stat. 595; Mar. 4, 1915, ch. 176, § 1, 38 Stat. 1196; Feb. 28, 1920, ch. 91, § 436, 41 Stat. 494; Mar. 4, 1927, ch. 510, § 3, 44 Stat. 1448; restated Apr. 23, 1930, ch. 208, § 1, 46 Stat. 251.
	49: 22(1) (1st sentence words between 5th and 6th semicolons).	Feb. 4, 1887, ch. 104, § 22(1) (1st sentence words between 5th and 6th semicolons), 24 Stat. 387; restated Mar. 2, 1889, ch. 382, § 9, 25 Stat. 862; Aug. 18, 1922, ch. 280, § 1, 42 Stat. 827; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.
	49: 316(j), 317(b) (proviso).	Feb. 4, 1887, ch. 104, 24 Stat. 379, §§ 216(j), 217(b) (proviso); added Aug. 9, 1935; ch. 498, § 1, 49 Stat. 560, 561; Sept. 18, 1940, ch. 722, § 22(e), 54 Stat. 925.
	49: 906(c) (proviso).	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 306(c) (proviso); added Sept. 18, 1940, ch. 722, § 201, 54 Stat. 935.
	49: 1005(c) (proviso).....	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 405(c) (proviso); added May 16, 1942, ch. 318, § 1, 56 Stat. 287.

The section consolidates and restates the source provisions for clarity. The word "subtitle" is substituted for "chapter" in 49 :22(1) to conform to the revised title. The words "and nothing in this chapter contained shall in any way abridge or alter the remedies now existing" in 49 :22(1) are omitted as unnecessary and as being included in the words "are in addition to". The word "law" is substituted for "statute" in 49 :22(1) for consistency.

CHAPTER 103—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER I—ORGANIZATION

Sec.
10301. General.
10302. Divisions of the Commission.
10303. Secretary of the Commission ; public records.
10304. Employee boards.
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10306. Conduct of proceedings.
10307. Office and sessions.
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SUBCHAPTER II—ADMINISTRATIVE

10321. Powers.
10322. Initial decisions—nonrail proceedings.
10323. Rehearing, reargument, and reconsideration—nonrail proceedings.

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

SECTION 10501

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10501(a) (introductory words), (1).	49: 1(1)(a), (b), (2) (through 1st comma).	Feb. 4, 1887, ch. 104, § 1(1), (2), 24 Stat. 379; June 29, 1906 ch. 3591, § 1, 34 Stat. 584; June 18, 1910, ch. 309, § 7, 36 Stat. 544, 545; restated Feb. 28, 1920, ch. 91, § 400, 41 Stat. 474; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Aug. 12, 1958, Pub. L. 85-625, § 3, 72 Stat. 570; Aug. 4, 1977, Pub. L. 95-91, § 306, 91 Stat. 581.
10501(a)(2).....	49: 1(1) (words after last comma and words following cl.(b)), (2) (words between 1st and 2d commas).	
10501(b).....	49: 1(2) (2d comma through period).	
10501(c).....	49: 1(17)(a) (proviso).....	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 1(17)(a) (proviso); added Feb. 28, 1920, ch. 91, § 402, 41 Stat. 477; Sept. 18, 1940, ch. 722, § 4(b), 54 Stat. 901.

In the introductory matter of subsection (a), before clause (1), the words "Subject to this chapter and other provisions of law" are inserted to inform the reader that other sections of the chapter and subtitle qualify the grant of jurisdiction to the Interstate Commerce Commission under the section. The words "the Interstate Commerce Commission has jurisdiction" are substituted for "The provisions of this chapter shall apply to" in 49:1(1) and (2) to eliminate surplus language and for clarity because the intent of the words is to grant the Commission jurisdiction. The words "over transportation" are substituted for the words "to common carriers engaged in" in 49:1(1) and "to such transportation of passengers and property" in 49:1(2) to eliminate redundancy and for consistency with the other general jurisdictional statements at the beginning of each of the subchapters of chapter 105 of the revised title, giving the Commission jurisdiction over transportation.

In subsection (a)(1), before clause (A), the words "rail carrier, express carrier, sleeping car carrier, water common carrier, and pipeline carrier" are substituted for "common carriers" for clarity and because a definition of "common carrier" has been adopted for the subtitle that is broader and includes common carriers other than those to which 49:1(1) and (2) apply.

In subsection (a)(1)(A), the word "only" is substituted for "wholly" for clarity.

SECTION 10504

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10504(a)	45:744(j)(2)	Jan. 2, 1974, Pub. L. 93–236, 87 Stat. 1008, § 304(j); added Feb. 5, 1976, Pub. L. 94–210, § 804, 90 Stat. 139; Oct. 19, 1976, Pub. L. 94–555, § 206, 90 Stat. 2621.
10504(b)	45:744(j)(1)	

In subsection (a)(2), the defined term "rail mass transportation" is substituted for "mass transportation services" as being more precise and for consistency with the terms of the subtitle.

In the introductory matter of subsection (b), before clause (1), the words "The Interstate Commerce Commission does not have jurisdiction under this subtitle over" are substituted for "no local public body . . . shall, . . . be subject to the Interstate Commerce Act" for clarity and to conform to the terms used in chapter 105 of the revised title.

In subsection (b)(2), the word "interstate" is omitted as unnecessary. The words "chief executive officer" are substituted for "Governor" as more appropriate in view of the definition of "State" that includes the District of Columbia.

The words "except as provided in subparagraph (B) of this paragraph" and subparagraph (B) are omitted as unnecessary because the Commission does not have jurisdiction over safety, collective bargaining, and employee benefit matters, and those matters are covered by other provisions of title 49 related to the Secretary of Transportation.

SECTION 10505

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10505	49:12(1)(b)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 12(1)(b); added Feb. 5, 1976, Pub. L. 94–210, § 207, 90 Stat. 42.

In subsection (a), the words "by order" and "in such order" are omitted as surplus. The word "unreasonable" is substituted for "undue" for consistency. See the revision note for section 10101 of the revised title.

In subsection (b), the words "Secretary of Transportation" are substituted for "Secretary" for clarity.

In subsection (d), the words "after notice" are omitted as unnecessary in view of subchapter II of chapter 5 of title 5.

In subsection (a)(1)(B), the word "partly" is omitted as surplus.

In subsection (a)(1)(C), the words "natural or artificial" in 49:1(1)(b), before "gas" are omitted as surplus. The word "or" is substituted for "and" in the phrase "except water and . . . gas" in 49:1(1)(b), for clarification because the exemption does not require the pipeline transportation of both water and gas before the exception applies. The exclusion of pipeline transportation of oil from the jurisdiction of the Commission is inserted in view of section 306 of the Department of Energy Organization Act (Pub. L. 95–91), transferring the functions of the Commission related to transporting oil by pipeline to the Department of Energy. The conferees of the 2 Houses explain in their joint statement that the transfer is intended to include "pipeline transportation of crude and refined petroleum and petroleum byproducts, derivatives or petrochemicals." See House Report 95–539, page 69.

In subsection (a)(2)(A), the words "District of Columbia" are omitted in view of the definition of "State" in section 10102 of the revised title.

In subsection (b)(1), the words "a State (other than the District of Columbia)" are inserted to exclude the District of Columbia from the jurisdictional exemption in view of 49:1(2) that does not now exempt the District of Columbia but would become exempt, but for the exclusion, as the result of the definition of "State" adopted for the revised title. The words "except as otherwise provided in this subtitle" are inserted for clarity.

In subsection (b)(2), the words "passengers or property" are omitted as unnecessary in view of the definition of "transportation" that applies to the subtitle.

In subsection (c), the words "does not affect" are substituted for "nothing * * * shall impair or affect" for clarity and to eliminate redundancy. The word "power" is substituted for "right" for clarity and consistency. The words "freight and passenger service" are omitted as surplus. The word "unless" is substituted for "except insofar" and "except" for clarity. The word "lawful" is omitted as surplus. The words "just and" are omitted for consistency with other provisions of the revised title. See the revision note to section 10101 of the revised title.

SECTION 10502

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10502(1)	49: 303(a)(14) (words after 2d comma).	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 203(a)(14) (words after 2d comma); added Aug. 9, 1935, ch. 498, § 1, 49 Stat. 544; restated Sept. 18, 1940, ch. 722, § 18(a), 54 Stat. 920.
10502(2)	49: 902(d) (words after 1st comma).	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 302(d) (words after 1st comma); added Sept. 18, 1940, ch. 722, § 201, 54 Stat. 930.

The section restates the source provisions for clarity and as a result of the codification of the jurisdictional provisions in chapter 105 of the revised title.

In clause (2), the word "transportation" is substituted for "business" for consistency and because the Interstate Commerce Commission has jurisdiction over transportation.

SECTION 10503

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
10503(a)	49: 6(11)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 6(11); added Aug. 24, 1912, ch. 390, § 11 (5th par.), 37 Stat. 568; Feb. 28, 1920, ch. 91, §§ 409, 412, 413, 41 Stat. 483; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, § 8(c), 54 Stat. 910.
10503(b)	49: 51 (related to 49:6 (11)).	Aug. 24, 1912, ch. 390, § 17 (last par. related to § 6), 31 Stat. 568.

In the introductory matter of subsection (a), before paragraph (1), the words "passengers or property" are omitted as unnecessary in view of the definition of transportation that includes passengers and property. The words "the limits of" are omitted as surplus. The words "rail carrier and a water common carrier" are substituted for "by rail and water . . . by a common carrier or carriers" to eliminate redundancy and for consistency with 49:1(1) and (2) that have used the terms "rail carrier" and "water carrier" (meaning "water common carrier") since the enactment of the original provision in 1912. The word "jointly" is inserted for clarity. The words "even if part of the transportation is outside the United States" is substituted for "through the Panama Canal or otherwise" as being more precise. See *United States* v. *New York Central R.R.*, 272 U.S. 457, 1926[14]; *Penn. R.R. Co.* v. *United States*, 55 F.Supp. 473, 484, D.C.N.J., 1943, reversed in part on other grounds, 323 U.S. 612, 1945. The words "in the following particulars, in addition to the jurisdiction given by this chapter" are omitted as surplus. The words "and of the carriers" are omitted as surplus and for consistency with other jurisdictional statements of chapter 105 of the revised title.

In subsection (a)(2), the words "passengers or property" are substituted for "traffic" for consistency with the definition of transportation.

In subsection (a)(2)(A), the word "transported" is substituted for "brought, or from which the passengers or property is taken" for simplicity.

In subsection (b), the word "complaint" is omitted as unnecessary. The words "upon formal complaint or in proceedings instituted by the Commission of its own motion" are omitted as surplus.

14. 47 S.Ct. 130. 71 L.Ed. 350.